FINAL REPORT
(Part III)

Author: C.A. Sheppard
Title: The Law of Languages in Canada

Div: II contract no 9

PART II

JURISDICTION OVER LANGUAGES IN CANADA

CHAPTER II

JURISDICTION OVER LANGUAGES IN CANADA

2.01 Constitutional provisions.-

The sole provision in the British North America Act, 1867 dealing directly with language is section 133:

> "Either the English or the French Language may be used by any Person in the Debates of the House of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.
>
> The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages."

In 1949, section 1 of the British North America (No. 2) Act, 1949 [1] gave Parliament the right to amend from time to time "the Constitution of Canada". Excluded from such power of federal amendment were "the classes of subjects ... assigned exclusively to the Legislatures of the provinces, or ... rights or privileges ... as regards the use of the English or the French language". Section 133 of the B.N.A. Act is thus the cornerstone of linguistic jurisdiction in Canada. But, one cornerstone is not sufficient to support an edifice. Furthermore, section 133 is rather shaky a cornerstone, as an examination of its terms will establish clearly.

---

1. 13 Geo. VI, c. 81 (U.K.). cf. 1.119 for history of this amendment.

2.01 Constitutional provisions.-

The sole provision in the British North America Act, 1867 dealing directly with language is section 133:

> "Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.
>
> The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages."

In 1949, section 1 of the British North America (No. 2) Act, 1949 gave Parliament the right to amend from time to time "the Constitution of Canada". Excluded from such power of federal amendment were "the classes of subjects ... assigned exclusively to the Legislatures of the provinces, or ... rights or privileges ... as regards the use of the English or the French Language". Section 133 of the B.N.A. Act is thus the cornerstone of linguistic jurisdiction in Canada. But, the cornerstone is not sufficient to support an edifice. Furthermore, section 133 is rather shaky a cornerstone, as an examination of its terms will establish clearly.

---

1. 13 Geo. VI, c. 81 (U.K.). cf. 1.119 for history of this amendment.

2.02 The real scope of section 133 of the B.N.A. Act.- Indeed a careful analysis of the terms of s. 133 leads to the unavoidable conclusion that its scope is extraordinarily limited. In effect, it deals only with some aspects of the legislative and judicial processes at the federal level and in Quebec.

(a) The legislative process.- Insofar as legislation is concerned, it seems to cover the field quite thoroughly: either language can be used in the debates of Parliament or the Quebec Legislature; the records and journals of both these Houses shall be bilingual; and all statutes they pass shall be published in both languages. If legislation is considered in its traditional sense, this is indeed unambiguous.

(b) Subordinate legislation not covered.- But, when it drafted s. 133, the United Kingdom Parliament never anticipated the burgeoning of the fertile and vast field of subordinate legislation. The growth of administrative law in the present century has been enormous[1]. The regulations, rules, orders, by-laws, ordinances, orders-in-council and proclamations which affect the rights and obligations of citizens in Canada are not any longer numbered in the hundreds or even in the thousands, but in the tens of thousands or perhaps hundreds or thousands.

1. cf. 3.17 et seq..

Yet the wording of s. 133 can hardly be said to embrace them within its ambit. Legally speaking, neither federal nor Quebec subordinate legislation is required to be bilingual. And in fact a substantial proportion thereof is unilingual[1]. The fact that most federal subordinate legislation and important Quebec regulations are published in both languages is the result of practical considerations and custom rather than of any constitutional requirement. Admittedly, the custom is old and uniform enough to acquire almost the force of law. But it is not yet law. Section 133 of the B.N.A. Act is perhaps its inspiration, but not its sanction.

(c) Court proceedings.- The second area to which s. 133 applies is that of court proceedings. In "any Court of Canada ... and in any ... Courts of Quebec" it is provided that either French or English may be used for "any Pleading or Process". What is meant by "Courts of Canada" and "all or any of the Courts of Quebec" will be discussed in chapter IV [2] where we will see that these terms are by no means free from all uncertainty. Nor are the words "Pleading or Process" crystal clear. The United Kingdom Parliament may have intended to guarantee the right to use either language in all and every court proceedings, including written pleadings, evidence and argument, but it

1. For evidence that much federal subordinate legislation is unilingually English: cf. 3.24 (d), footnote 3, and 3.30. The converse situation obtains in Quebec: cf. 3.39.
2. respectively in 4.17 and 4.18.

certainly did not make its intention as explicit as might have been desirable. Furthermore, the guarantees of section 133 remain somewhat academic in the absence of adequate provisions for bilingual judges and court personnel[1]. The constitution is silent on the right to be tried by a jury composed of members speaking one's own language or by mixed juries[2].

(d) Quasi-judicial functions not covered.- Furthermore, as in the case of subordinate legislation, the Fathers of Confederation had no way of foreseeing the rise of innumerable quasi-judicial boards and commissions exercising many of the functions previously reserved to ordinary courts of law[3].

(e) Administration activities not covered.- In addition to these extremely serious limitations, s. 133 of the B.N.A. Act completely failed to deal with language rights in the actual conduct of government and administration. It is utterly silent on the rights of citizens who communicate with the state or to whom the state addresses notices or official communications.[4] It makes no provision for the protection of linguistic rights in municipal government[5]. In fact, the whole vital question of languages is not in any way covered at any level of government,

---

1. cf. 4.22 to 4.30 for a discussion of the problem of court interpreters; 4.31 to 4.34 for court stenographers; and 4.36 to 4.40 for some of our conclusions and recommendations.
2. cf. Chapter V for a full discussion.
3. Federal quasi-judicial tribunals are discussed in Chapter VI and Quebec quasi-judicial boards and commissions, in Chapter VII. For an analysis of their constitutional position, see 6.02 (federal boards) and 7.02 (Quebec boards).
4. cf. Chapter IX for a detailed study of the subject.
5. cf. 8.03.

whether federal, provincial or local. In short the constitution does not ensure that the public affairs of any given jurisdiction must be conducted in either language. Except for the narrow terms of s. 133, the right of anyone to use French -- or for that matter English -- is not guaranteed.

Thus, if we examine objectively the words of s. 133 of the B.N.A. Act standing alone, we must conclude that they give very little support to the theory that Canada is a bilingual country. It may be that the legislator thought that the meagre words of s. 133 would be sufficient. But, had it not been for the much more generous legislative judicial and administrative practices which, as we will see in the next chapters, have evolved in Canada, it would be immediately obvious that s. 133 guarantees very little.

2.03 The ancillary concept of language.-

It becomes rapidly evident to even the most perfunctory student of Canadian constitutional law, that language presents itself with two aspects: as a matter of cultural survival and as ancillary to the exercise of the powers attributed by the B.N.A. Act to Parliament or to the provincial Legislatures. In Canada it has been dealt with generally from the ancillary point of view and has been regulated only insofar as necessary to permit the full exercise of jurisdiction over another competent subject matter. Such ancillary or incidental legislation is not indispensable in every case and may be exercised only occasionally. It will tend to be unnecessary in linguistically homogeneous jurisdictions or in areas where, by custom or practice, a single language is used.

But where linguistic minorities are large, the legislator may have to regulate the linguistic aspects of legislative measures. Many examples of such ancillary legislation will be examined in this Report: provisions for interpreters[1], mixed juries[2], the language of proceedings before boards and commissions[3], the use of languages in municipal councils, municipal by-laws[4] or municipal notices[5], language qualification for municipal employment[6], or even municipal office[7], public notices by government authorities or by individuals to the general public[8], official forms and returns[9], language qualifications for certain official, professional or private employment[10], the regulation of the linguistic aspects of a number of private activities affecting the general public[11], the language of company charters or company names[12], as well as the interpretive provisions in statutes[13] and in international agreements[14]. Many other examples could be provided, but the ones cited are sufficient to illustrate the argument that such linguistic regulation is purely incidental to the main purpose of a statute. In other words, to a considerable extent, language might be characterized as an incidental of the exercise of jurisdiction.

---

1. cf. 4.22 to 4.30.
2. cf. Chapter V.
3. cf. 7.04.
4. cf. 8.03.
5. cf. 8.05 and 8.07.
6. cf. 8.16.
7. cf. 8.22.
8. cf. 9.03 to 9.07.
9. cf. 9.08 and 9.09.
10. cf. 9.10 and 9.11.
11. cf. 9.12.
12. Chapter X.
13. cf. 3.42, and 3.47.
14. cf. 12.24 et seq..

2.04 Language as a substantive matter of culture.-

Yet the ancillary aspect of language in any society, and particularly in a bilingual one, is undoubtedly secondary to its cultural meaning. To say that language is a mere means of communication is to state less than half the truth. It is also, and foremost, the foundation of a particular culture, the prerequisite of its survival, and the vehicle of its propagation. In this perspective, language can no longer be treated as an incidental, but becomes the essential element of ethnic identity and cultural survival. In fact, for a linguistic minority the preservation of its judicial and political institutions is meaningful only within the more encompassing goal of cultural survival. Rather than language being ancillary to other ends, these ends may become ancillary to the preservation of language. Even from a detached constitutional point of view, to approach language as an ancillary of federal or provincial jurisdiction is fruitless and unrealistic. The yawning gaps in the B.N.A. Act have encouraged such attitude, but it is now obvious that language cannot any longer be considered in Canada as a mere incidental to be brushed aside whenever possible. It is to a large extent because it has been so treated that we find ourselves in the present constitutional and political impasse.

It is true that s.133 in a limited way recognizes the importance of language but, because of its narrow scope, it is totally insufficient to provide adequate protection to linguistic minorities or to satisfy the demands of a militant French Canada.

2.05 Who has jurisdiction over languages?.- In that case who has jurisdiction over languages in Canada? Does Parliament? Do the Provinces? Is there joint jurisdiction? We saw that the British North America (No. 2) Act, 1949 gave to Parliament the right to amend "the Constitution of Canada" except "as regards the use of the English or the French language".[1] Could one invoke the a contrario reasoning that the language provisions of the Act, and namely s. 133, would not have been excluded from the federal amending powers if they had not otherwise fallen within federal jurisdiction? Do language rights fall within the "Constitution of Canada" which would normally be amendable by Parliament, but which is now withdrawn from Parliament and left to the United Kingdom Parliament? It would be obviously absurd to argue thus that language rights in general fall within sole federal jurisdiction. Insofar as its ancillary aspects are concerned, there is no doubt that both Parliament and the Legislatures

---

1. Under s. 92 (1) of the B.N.A. Act the provinces have always possessed the right to amend their own constitutions, except insofar as the office of Lieutenant-Governor was concerned, and some limitations in s. 80 (dealing with electoral districts in Quebec's Eastern Townships) and s. 93 (education).

can legislate at will, subject to s. 133.[1] Within their jurisdictions, either could regulate the incidental linguistic aspects of the exercise of their legislative powers. Insofar as more substantive linguistic rights are concerned, it would appear that neither Parliament nor the Provinces have exclusive jurisdiction. Parliament cannot amend the provisions of s. 133 which apply to it or to federal courts. But insofar as federal quasi-judicial functions are concerned, or subordinate legislation, or general administration, or any area which does not fall within exclusive provincial jurisdiction is concerned, it can regulate the use of languages any way it sees fit. Conversely, the Provinces seem to enjoy a similar substantive jurisdiction over language in all provincial institutions and within all areas of provincial concern, from their Legislatures and courts to their administrative practices and their systems of education.[2] As the Privy Council held in Hodge v. The Queen[3],

> "They (the Provincial Legislatures) are in no sense delegates of or acting under any mandate from the Imperial Parliament. When the British North America Act enacted that there should be a legislature for Ontario, and that its legislative assembly should have exclusive authority to make laws for the Province and for provincial purposes in relation to the matters enumerated in sect. 92, it conferred powers not in any sense to be exercised by delegation from

---

1. cf. Laskin, Bora, Canadian Constitutional Law, 2d ed., 1960, p. 94.
2. This will appear abundantly in Chapter XIII (dealing with the official status of languages in the various provincial, territorial and federal jurisdictions).
3. /1883-84/ 9 A.C. 117 at 133.

> or as agents of the Imperial Parliament, but authority as plenary and as ample within the limits prescribed by sect. 92 as the Imperial Parliament in the plenitude of its power possessed and could bestow. Within these limits of subjects and area the local legislature is supreme, and has the same authority as the Imperial Parliament, or the Parliament of the Dominion would have had under like circumstances to confide to a municipal institution or body of its own creation authority to make by-laws, or resolutions as to subjects specified in the enactment, and with the object of carrying the enactment into operation and effect."

The only Province whose right to legislate on language is somewhat restricted by s. 133 is Quebec. But even here, as will be seen anon, the constitutional position is far from clear.

2.06 Can Quebec abrogate s. 133 of the B.N.A. Act?

We have seen[1] that s. 133 is safeguarded against amendment by Parliament, but is it immune to modification or abrogation by Quebec? It has been generally assumed in Canada and in Quebec that the purpose of s. 133 was to guarantee the rights of the English-speaking minority in Quebec from encroachment on its linguistic rights by the provincial authorities as it conversely insured the rights of French-Canadians in the federal sphere. How, then, could Quebec lay claim to the right to abolish these guarantees unilaterally? Yet, although it might appear that s. 133 is beyond the reach of Quebec authorities, a textual analysis of the B.N.A. Act and reference to historical precedent, give a minimum of plausibility to the contrary view.

The argument would run as follows: the language provisions dealing with the Quebec Legislature and courts in s. 133 form part of the constitution of the Province, just as the same provisions in connection with Parliament and federal courts were found to form part of the constitution of Canada. Consequently, they can be amended pursuant to the power given to the Provinces by s. 92 (1) to amend their own constitutions. Unlike the case of the federal amending power, the language provisions of s. 133 are not exempted

1. In 2.01.

from the application of the provincial right to amend. Furthermore, a contrario arguments could be derived from ss. 80 and 93 of the B.N.A. Act where the United Kingdom Parliament, in order to prevent the exercise of provincial jurisdiction in certain circumstances, imposed specific limitations. Section 80 states:

> "The Legislative Assembly of Quebec shall be composed of Sixty-five Members, to be elected to represent the Sixty-five Electoral Divisions or Districts in Lower Canada in this Act referred to, subject to Alteration thereof by the Legislature of Quebec: Provided that it shall not be lawful to present to the Lieutenant-Governor of Quebec for assent any Bill for altering the Limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule to this Act, unless the Second and Third Readings of such Bill have been passed by the Legislative Assembly with the Concurrence of the Majority of the Members representing all those Electoral Divisions or Districts, and the Assent shall not be given to such Bill unless an Address has been presented by the Legislative Assembly to the Lieutenant-Governor stating that it has been so passed."[1]

Its obvious purpose was to protect the representation in the provincial Legislature of what was then the essentially English population of the Eastern Townships.[2] To establish clearly that s. 80 could not be modified under the amending powers of s. 92 (1), it is stated categorically that it would not be lawful to reapportion the electoral divisions or districts in that region except under certain conditions. Section 93 says:

---

1. The Second Schedule lists the following Electoral districts: Argenteuil, Brome, Compton, Huntingdon, Megantic, Missisquoi, Ottawa, Pontiac, Shefford, Town of Sherbrooke, Stanstead, Wolfe and Richmond.

2. We will see in 4.40 that the proportion of English population in these districts now does not even reach 20%.

"In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:-

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union:

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec:

(3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education:

(4) In case any such Provincial Law as from time to time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section."

Here again no doubt is left as to the restrictions on provincial powers. But no such limitations are found with respect to s. 133. In other words, it could be argued with some logic, that in contradistinction with the limitations imposed on the federal amending powers by s. 91 (1), or on provincial jurisdiction by ss. 80 and 93,

s. 133 is not so protected.

Even more persuasive is the Manitoba precedent.[1] It will be recalled that s. 23 of the Federal Manitoba Act[2] provided:

> "Either the English or the French language may be used by any person in the debates of the Houses of the Legislature, and both those languages shall be used in the respective Records and Journals of those Houses; and either of those languages may be used by any person, or in any Pleading or Process, in or issuing from any Court of Canada established under the British North America Act, 1867, or in or from all or any of the Courts of the Province. The Acts of the Legislature shall be printed and published in both those languages."

Since some doubts had been cast on the power of the Dominion Government to establish provinces in the Northwest Territories and to pass the Manitoba Act, in 1871 the United Kingdom Parliament enacted the British North America Act, 1871[3] confirming Ottawa's right to create new provinces. Section 5 of the 1871 B.N.A. Act specifically declared that the Manitoba Act "shall be and be deemed to have been valid and effectual for all purposes whatsoever". Section 6 stipulated that Parliament could not alter the provincial constitution of Manitoba as enacted in the Manitoba Act. Section 23 of the Manitoba Act, which repeated almost verbatim the language of s. 133 of the B.N.A. Act, was thus secured against amendment by the Parliament of Canada.

Section 23 gave to the French minorities in Manitoba guarantees analogous to those granted to the English minority

---

1. cf. s. 1.138 et seq..
2. 1870, S.C., 33 Vict., c. 3.
3. 34-35 Vict., c. 28.(U.K.).

in Quebec. The technical difference between the two is that the Manitoba Act was a federal statute ratified by the Imperial Parliament, while the B.N.A. Act was an Act of the United Kingdom Parliament. Since the 1871 B.N.A. Act prevented Parliament from amending the Manitoba Act, it might be said to have raised it to the same level of fundamental law as the B.N.A. Act. There is, thus, very little, if any, difference in the statutory position of s. 23 of the Manitoba Act, and s. 133 of the B.N.A. Act. Nevertheless, as we saw[1], in 1890 the Manitoba Legislature abrogated s. 23 in the following terms:[2]

> "1. Any statute or law to the contrary notwithstanding, the English language only shall be used in the records and journals of the House of Assembly for the Province of Manitoba, and in any pleadings or process in or issuing from any court of the Province of Manitoba. The Acts of the Legislature of the Province of Manitoba need only be printed and published in the English language.
>
> 2. This Act shall only apply so far as this Legislature has jurisdiction so to enact, and shall come into force on the day it is assented to."

The Bill was never disallowed nor successfully challenged in the courts. If the abrogation of s. 23 of the Manitoba Act, which is practically undistinguishable from s. 133 of the B.N.A. Act, by a provincial Legislature is valid and subsisting, why would Quebec be in a different position? The purpose of both sections was the same: to protect

---

1. In 1.143.
2. An Act to provide that the English Language shall be the official language of the Province of Manitoba, 1890, S.M., 53 Vict., c. 14.

similar linguistic rights of an ethnic minority inside a province; both measures were embodied in a constitutional statute which could not be amended by the federal Parliament; in both cases the Province would be exercising its jurisdiction to amend its own constitution. Conversely, if it is argued that the Manitoba amendment was unconstitutional, Quebec could not change s. 133. We do not see how one could be valid without the other being also legitimate.

There is no doubt that the recognition of Quebec's right to amend s. 133 would defeat the apparent intention of the Fathers of Confederation. But, so did the 1890 Manitoba abolition of French. Nor do we think that any of the foregoing arguments are necessarily conclusive and intellectually satisfactory. But they cannot lightly be dismissed and contribute to underscore the weaknesses of the constitution in this area. So far, it is true, Quebec has not expressed any intention of changing s. 133 and, if it did, it might run into incommensurable political difficulties and eventual disallowance (which in turn might be politically unfeasible for the federal Government). But the possibility of a successful challenge to the untouchability of s. 133 cannot be dismissed.

2.07 Conclusion: need for clarification of the constitutional position.-

The conclusions to be drawn from the foregoing analysis of s. 133 are self-evident. The B.N.A. Act itself is totally unsatisfactory and does not even provide minimum guarantees to either the French or English minorities in Canada. Such linguistic rights as exist in Canada will be found generally to be based on custom, practical considerations, or political expediency. When they are embodied in provincial or federal statutes, these can be abrogated at will. We do not underrate the role that custom has played in flushing out the meagre provisions of the constitution and in ensuring the respect of a minimum of rights. Indeed, it has probably resulted in a more generous recognition of bilingualism than would have been the case had legislation frozen the entire subject prematurely. Custom - and political considerations - will in all probability continue to play a growing role. This will provide welcome flexibility and adaptation to circumstances. But if language rights are to be enshrined in our constitution, this will not be achieved without a complete revamping of the terms of s. 133, not only to define clearly the areas of respective jurisdictions, but also to encompass all legislative, quasi-legislative, judicial, quasi-judicial, administrative and educational activities in Canadian society. This suggestion that inabridgeable language guarantees be provided in a modern constitution is not made in order to replace custom and practice, but so as to build a floor below which it could never sink again.

PART III

LEGISLATING IN TWO LANGUAGES

CHAPTER III

LEGISLATING IN TWO LANGUAGES.

DIVISION I

I N T R O D U C T I O N

3.01 Scope of present study.-

The present chapter is devoted to a study of how bilingual legislation is drafted and published in Canada. It covers both Federal and Quebec legislation, the only two jurisdictions which at the present time are required to enact laws in both French and English.[1] While a good deal of attention is paid to the statutes of the Federal Parliament and the Quebec Legislature, the major part of this study is devoted to the burgeoning field of subordinate legislation or administrative law. Subordinate legislation consists of a multitude of rules, regulations , orders and by-laws created by Government Departments and Agencies under parliamentary authority. In other words, this is a type of subordinate legislation which has been delegated to administrative entities. It has assumed enormous proportions in the modern welfare state and affects the daily lives of citizens very often in a much more direct manner than traditional statutory legislation. Although an increasing amount of attention is beginning to be paid to this phenomenon, it is still a largely unexplored territory, particularly in Canada. Within the general scope of our research project, we have examined the drafting and publication of this subordinate legislation both federally and in Quebec. We have confined our study of provincial subordinate legislation to the Province of Quebec for the obvious reason that it is the only one which is likely to use the two languages in its subordinate legislation.

1. We have seen in 1.157, 1.159 and 1.160 that French might also still be the official language in the Northwest Territories and in the Yukon. Nor is [illegible] Alberta and Saskatchewan; cf. 1.164 et seq.

We have also tried to determine the practical and juridical difficulties resulting from legislating, either at the parliamentary level, or at the subordinate level, in two languages.

3.02 Methods of research.-

This voluminous chapter is largely based on the replies to a series of detailed questionnaires issued to almost all relevant Government Departments, Official Agencies and Boards and Commissions. A considerable number of interviews were also conducted with various Government officials both in Ottawa and in Quebec City. In addition to that, the statute books were examined; the relevant jurisprudence was found and a great variety of doctrinal writings were considered. We also had access to a number of Government memoranda and confidential documents which were made available as background material.

On the whole, we have enjoyed extraordinary co-operation from all officials and Government entities approached both in the Federal Government and in the Quebec Government.

3.03 Historical background.[1]-

The first evidence of bilingualism in legislative enactments is to be found during the British Military Regime following the Cession of Quebec in 1760.[2] On June 21, 1764 the Quebec Official Gazette was first published.[3] It contained ordinances and proclamations in both languages. The Gazette still exists as the official organ for the publication of public notices and subordinate legislation in the Province of Quebec. In the beginning of the year 1768 François Joseph Cugnet was named French secretary of

---

1. This section summarizes the relevant data found in Chapter I.
2. cf. 1.24.
3. cf. 1.25 and 1.35.

of the Governor and Council at Quebec[1]. His duties were to translate into French the laws, orders and regulations of the Governor-in-Council under the direction of the latter, and to serve as a consultant on the pre-Cession law by retrieving and examining the ancient edicts and decisions of the Superior Council and of the other courts under the old regime. Cugnet was an accomplished legal scholar and fluent in the English language. For a quarter of a century he translated the Governor's ordinances into French.

The first ordinances of Governor Murray had been published in French[2]. His proclamations, as those of Amherst, Burton, Gage, Haldimand, were drafted in French[3]. Some of Murray's proclamations, however, were published in both languages, though some were published in French only[4].

After the passing of the Quebec Act the right to speak either the English or French languages was accorded more recognition than it had had before. In the Legislative Council after 1774, the use of the English and French languages was optional. From the time of its first session in 1777, both languages were used in the proceedings of the Council[5]. Ordinances were published in both languages.[6] However, it should be noted that the original and official version of most ordinances was in English and that the French text was signed "F. J. Cugnet. S.F. traduit par ordre de Son Excellence". Hence the

---

1. cf. 1.57.
2. Constitutional Documents, op. cit., pp. 35-46.
3. Chapais, op. cit., p. 55.
4. Constitutional Documents, pp. 42 and 44.
5. cf. 1.75.
6. cf. 1.78.

French translation was completely unofficial.[1]

In the year 1791 the Constitutional Act divided Canada into two provinces known as Upper Canada and Lower Canada. In the Legislative Assembly of Lower Canada the practice was to use both languages in the Assembly's deliberations from its first sitting on December 17, 1792[2]. On December 27, 1792 a rule of the Assembly was passed to the effect that proceedings were to be drawn up in either the English or the French language[3]. The Speaker of the Assembly was to use both languages while discharging his functions, and if he did not know both languages, was to speak his own and have his addresses translated by the Greffier of the Assembly[4]. On January 23, 1793 the House passed a resolution that the "language of bills" had reference to the area of law to which the bill related; that is to say, bills relating to the civil law were drafted in French, and those relating to the criminal law were drafted in English[5]. Statutes of the Legislative Assembly were published in

---

1. cf. Ordinances made and Passed by the Governor-and-Council of the Province of Quebec, 1763-1791, Ottawa, 1917.
2. cf. 1.91.
3. cf. 1.92.
4. cf. 1.91.
5. cf. 1.92.

both languages. In 1793 the Assembly passed An Act to provide for the Publication of certain laws, and for the printing and distributing to certain persons, for the purpose of public information, all Laws that have been, and shall be passed in the Legislature of this Province, under the present Constitution.[1] The practice was to publish the English and French versions of the Assembly's Statutes on opposite pages. An Act for the better Regulation of the Militia of this Province, and for repealing certain Acts or Ordinances therein mentioned[2] provided that subordinate legislation was to be published in both languages. On June 3, 1793 the Legislative Assembly of Upper Canada passed a resolution to provide for the translation into French of its Ordinances although this did not give to such translations the value of an official text.[3]

Section XLI of the Act of Union provided that English would be the only language used in the Legislative Assembly of the Province of Canada, but that translations of the English enactments would be made and kept among the records of the Legislature.[4] On September 18, 1841 the United Parliament passed An Act to provide for the translation into the French language of the Laws of this Province, and for other purposes connected therewith[5]. The same Act provided that bilingual copies of the Hournal of the House were to be made available for the use of members; that every motion was to be read in both languages in the House before it was debated; that all public bills were to be introduced by motion, which when read in conjunction with the provision on motions, means that the public bills had to be introduced in both languages ; that

1. cf. 1.95.
2. Id.
3. cf. 1.98.
4. cf. 1.102.
5. cf. 1.104.

bilingual notice had to be given prior to the introduction of any private bill. An Act to provide for the Summary Trial of Small Causes in Lower Canada[1] provided that Commissioners were to receive a printed copy of this Act in both languages. The consolidation of the Acts and Ordinances of Lower Canada was prepared in both languages.[2] A report of the Consolidation Commission indicates that the English version was prepared first. The second report of the Commission dated December 7, 1843 also recommended that an English version of the Civil Laws of Lower Canada be published for the benefit of the English-speaking inhabitants and that the English law be made comprehensible to French-speaking people by means of translation. A report by two of the Commissioners dated July 1, 1845 shows that the printing of these bilingual acts was being proceeded with with the greatest diligence. An Act to provide for the distribution of the Printed Copies of the Laws provided that as soon as possible after each session of the Legislature, acts were to be printed in both languages and distributed to all persons concerned with the administration of justice in Lower Canada.[3]

---

1. cf. 1.104.
2. cf. 1.103.
3. cf. 1.104.

On August 14, 1848 s.XLI of the Act of Union respecting the use of languages in the Legislature of the Province of Canada was repealed.[1] From that time up till Confederation all laws passed by the Parliament of Canada were assented to in both languages. Both texts were thereby made equally valid. The rules and standing orders of the Legislative Assembly of Canada adopted in 1854 endeavoured insofar as possible to maintain bilingualism in the proceedings of the Assembly.[2] Under these rules, all motions and questions were to be put in English and French. All bills were to be printed before the second readingin both languages, except for bills relating only to Upper Canada, although members were free to request French versions. Notice of private bills was to be given in both languages. All bills and documents were to be published in both languages unless it was otherwise directed. Further provisions relating to bilingualism were embodied in the constitution, rules and regulations of the Legislative Assembly of Canada adopted in 1861. These rules were published in both English and French on opposite pages in the same volume.[3] They stated that the rules for private bills were to appear in the bilingual Official Gazette and a résume of these rules was to be given in English and French newspapers. Notice of all private bills was to be given in both languages. Private bills were to be drafted in both languages in case this was requested by anyone. Every bill had to be presented on motion, and every motion had to be presented in both languages.

---

1. cf. 1.104.
2. cf. 1.106.
3 cf. 1.107.

In Lower Canada An Act respecting the Provincial Statutes, passed in 1859, provided for the distribution of bilingual statutes.[1] In 1866 was passed An Act to amend the Municipal Act of Lower Canada[2] which stipulated that municipal by-laws were to be kept in the language in which they were originally enacted and translated as required. Under the Municipal Act of Lower Canada both languages were used for reading unless one was dispensed with and publication could be effected in one language where the municipality showed that no detriment would be thereby caused to its inhabitants.[3]

An Act respecting the Consolidated Statutes for Upper Canada provided that it would not be necessary to enact Upper Canada statutes in French, but that the Governor could cause a consolidation to be printed at his discretion.[4]

On June 10, 1857 the Parliament of Canada passed An Act to provide for the Codification of the Laws of Lower Canada relative to the Civil Matters and Procedure[5] which stated that because persons of French origin were unfamiliar with the laws of England in force in Lower Canada at the time and because persons of British extraction were unfamiliar with the French laws in force at the time, the laws would be codified in both languages in order to enable all the inhabitants of Lower

1. cf. 1.107.
2. Id.
3. cf. 1.108.
4. cf. 1.109.
5. cf. 1.110.

Canada to understand the laws under which they were governed. The Act further provided that two secretaries were to be appointed to the Commission, one of whom was to be English-speaking, but well versed in the French language, and the other of whom was to be French-speaking, but well versed in the English language. The two versions of the Code were to stand side by side on the same page.

In the meantime, some forms of bilingual legislation also existed in the Western parts of Canada. In 1845 formal provision was made for the publication of resolutions of the Council of Assiniboia. The laws were to be promulgated in both languages. The consolidations of the laws of Assiniboia in 1852 and 1962 were both bilingual.[1]

The Manitoba Act passed by the Imperial Parliament in 1870 contained in s. 23 a provision similar to that found in s 133 of the British North America Act 1867.[2] From 1870 until 1890 when English was made the sole official language of the Province of Manitoba, the statutes of the Legislature of Manitoba were printed separately in English and French volumes.[3]

In the Northwest Territories, although it was intended that all acts of the Council of the Northwest Territories were to be published in the English, French and Cree languages, this intention was never fulfilled.[4] It is notable, however, that

---

1. cf. 1.129 and 1.130.
2. cf. 1.137.
3. cf. 1.143.
4. cf. 1.148.

by a resolution of Council on September 13, 1873 the Clerk of the Council was authorized to procure 50 French copies and 50 English copies of the Criminal Statutes of Canada for use by officials in the administration of justice in the Northwest Territories.[1] The Ordinances of the Northwest Territories Council were published in both languages under the Northwest Territories Act of 1877.[2] Amendments to the Act in 1880 and 1886 continued this provision of law. Until 1892 when French purportedly was abolished as an official language of the Northwest Territories ordinances of the Northwest Territories were published in both languages.[3]

In summary, bilingual legislation has existed in Quebec from the time of the Conquest. At one time, under the Act of Union, laws were passed in both languages in both Lower and Upper Canada. In Western Canada there was a some bilingual legislation by the Council of Assiniboia in the 1850s. Manitoba legislated in two languages from 1870 to 1890. Legislation was also bilingual in the Northwest Territories until 1892. As we will have occasion to notice, at the present time only the Parliament of Canada and the Legislature of Quebec are required to legislate in both French and in English but this constitutional requirement does not extend to the important field of subordinate legislation where bilingualism, when practiced, is a matter of custom and not of law.

---

1. cf. 1.149.
2. cf. 1.151 and 1.152.
3. cf. 1.155.

DIVISION II

S T A T U T E S

A - THE DRAFTING AND PUBLICATION OF FEDERAL STATUTES

3.04 Constitutional requirement of bilingual federal statutes.-

Section 133 of the B.N.A. Act states that the "Acts of the Parliament of Canada . . . shall be printed and published in both (the English and French) Languages". Rule 74 of the Standing Rules of the House of Commons direct that "All bills shall be printed for the second reading in the French and English languages." [1] From a practical point of view, this requirement of publication in both languages resolves itself in a problem of draftsmanship. If federal statutes must be published in French and in English, they must either be drafted in both languages or drafted in one of them and then translated. The purpose of the following sections of the present chapter is primarily to examine the drafting process of federal statutes and secondarily, their publication. It will be found that the universal practice is to draft all federal statutes in English and to translate them then into French. There is no simultaneous drafting in both languages.

3.05 The role of the draftsman in the elaboration of statutes.-[2]

The draftsman of a statute must first of all understand the legislative policy which the statute is intended to express. He must examine critically, as a lawyer, the policy which he is to

---

1. Found in Arthur Beauchesne, Rules and Forms of the House of Commons of Canada, 4th ed., Toronto, 1958.
2. The authority for all of this section is the preface in The Composition of Legislation, Ottawa, 1957, by E.A.Driedger pp. xi to xxiii.

draft into a legislative enactment. He may have to round out that policy and supply a multitude of details since the legislative proposal he receives is in the form of a broad statement. Some of these details and refinements of policy appear only while the statute is actually being drafted. In drafting the statute, the draftsman must consider it in relation to other statutes and the law generally. Where it happens that more than one government department may be interested in a proposed piece of legislation, the draftsman brings together officials from these various departments, and the initial decisions as to the policy of the act may be altered as a result. Sometimes, the legislative proposal has not been properly prepared by the departments concerned and the draftsman must join with the departments in policy discussions. He sometimes has to elicit decisions on policy or to prepare alternative drafts. In order to fully understand the legislative proposal, he must familiarize himself with its subject matter, with the legislative problems involved, and with the proposed solutions. Further conferences with the sponsoring department may become necessary for this purpose. Once he fully understands what is expected, he must then carefully plan the kinds of provisions the statute will have to include. This will entail further discussions with the sponsoring department, as a result of which

further changes may be made. Finally he is ready to draft. Once he has completed his draft, it must be revised, examined for imperfections, commented upon, considered and discussed with the sponsoring department until both the sponsors and the draftsman are satisfied with the statute's form and content. It is then submitted to the Deputy Minister or Minister and further conferences take place, after which further change may be required. In the process, the draftsman, having participated in all the deliverations culminating in the production of a statute, will have become somewhat imbued with the spirit in which the original policy and its subsequent modifications were conceived, and would therefore be more thoroughly acquainted with it than would someone who merely reads his finished product. We have stressed the participation of the draftsman in the actual elaboration of the statute in order to underline what appears to be one of the most serious reasons for the inadequacy of the French version of federal statutes. Indeed, as will be seen, federal laws are drafted exclusively in English and the finished product only is translated. The translator has not participated in the drafting. His sole function is to translate. He has been deprived of the opportunity given to the draftsman to familiarize himself with the true intention and purport of the legislator and is thus at a disadvantage in attempting

to convey this intention in another language. Secondly, not having participated in the drafting of the statute, he has had no opportunity to suggest changes in the English version to make both versions more nearly equivalent. As has been found in Quebec, where simultaneous drafting is frequently done, the preparation at the same time of texts in two languages produces a type of "feed-back" between versions which results in greater clarity and conformity between texts. At the present time French version of federal statutes constitutes at best a literal translation of an English original drafted without any consideration for the intricacies of the French language or the difficulty of translating technical or legal terms which may not have an exact equivalent in the other language. What problems of interpretation this has lead to will be seen in sections 3.29 et seq. of this chapter.

3.06 Federal statutes are drafted in English and then translated.-

All officials we have interviewed confirmed that the universal rule for all federal statutes is that they are drafted in English.[1] The single recent exception involved a statute emanating from the Department of Forestry. The drafts are prepared in the Department of Justice by an officer working in conjuction with officers of the various departments involved in the preparation of the statute.

---

1. see also Drieger, E.A., "The Preparation of Legislation", (1953) 31 Can.Bar R. 33 at 48.

When the initial draft has been prepared, it is submitted to the Legislation Committee which sits in the Department of Justice under the permanent chairmanship of the Associate Deputy-Minister. The deliberations and work of the Legislation Committee is also entirely in English. Any changes it may suggest will be in English only and relates to the English draft only. It is only after the preparation of the final draft in the English language, that the French version is prepared by the Law Translation Branch.[1] According to the Deputy-Minister of Justice[2] basic reason for unilingual drafting is that "statutes can only be drafted in one language". That language must be English rather than French, according to the Deputy-Minister, not only because the majority of his officers are English speaking, but because a great majority of officials, with whom they must deal in the preparation of legislation in various federal departments are also English speaking. The Deputy-Minister fears that at the present time there is no alternative to drafting in English only. He also stressed that there is frequently very little time available for drafting and thatn bilingual drafting would slow down the legislative process. He stated that the Department of Justice is often called upon to draft statutes in a great hurry. In such cases, the French version receives even less consideration than it usually

---

1. This Branch is situated in the office of Dr. M. Ollivier, Parliamentary Counsel, in the House of Commons. It is a branch of The Bureau of Translation created in 1934 by The Bureau of Translation Act, 1952, R.S.C. c. 270, one of whose functions is to translate bills and statutes (ss. 3 and 4).
2. In an interview with one of our representatives, on Aug. 26, 1965

does. However, as will be seen hereinafter in 4.10 to 4.12, steps appear to have been taken to attempt a remedy of this situation. It should be noted that the present practice of drafting all statutes in the Department of Justice to ensure uniformity and text was only adopted in 1940. Before then, statutes were drafted in, and by, the department concerned and often introduced in the House without any prior consultation with the Department of Justice.[1]

3.07 Problems peculiar to the translation of statutes.-

Skillful translation is always an art. Its demands are succinctly summarized in the Report of the Royal Commission on Government Organization [2] as follows:

> "Translation is not and can never be a purely mechanical process which can be undertaken by anyone with a working knowledge of both languages. It must, if it is to be effective, be a paraphrase which takes account of idiom as well as syntax. The professional translator of informational material must have a broad cultural background to enable him to reach beyond comparable idiom and seek equivalent image. To arrive at the best equivalent of a particular slogan or forceful metaphor may take as many hours as several hundred words of routine translation. Scientific and technical material presents problems that take longer to solve than those of an ordinary text.

---

1. Some officials indicated to us that they feel that the drafting can be done in only one language. As will be seen in s. 3.27 many of the official entities queried about subordinate legislation stated that they considered simultaneous drafting in both languages a practical impossibility. In fact, even Quebec seems to draft most of its statutes in French and to translate only near the end of the drafting process(s. 3.14).
2. Ottawa, Queen's Printer, 1963, Vol.3, p.103.

> " In Canada, translation between English and French presents peculiar problems. In each language many words have acquired connotations unknown in the country of origin. French in Canada has absorbed different anglicisms from those adopted in France, as well as many American words and terms, and no good French-American dictionary is available. English usage in Canada has accepted American meanings of some words but adheres to the British meanings of others."

But translation of statutes suffers from its own peculiar difficulties. Traditional legal expressions found in one language and which have a clearly defined meaning in that language sometimes have no equivalent in the other language. Certain technical words or phrases lose much of their meaning in the process of translation. This makes it sometimes difficult to assure consistency. The problem is further compounded in Canada by the existence of two systems of law - the civil law and the common law - which sometimes use the same word to denote different legal institutions or conversely, use different terms to describe essentially identical notions.[1] How does one translate "meubles" or "immeuble" in English? Or "realty" and "personality" in French? The terms "mortgage on personality" have sometimes been translated into "hypothèque sur meubles" although the Quebec Civil Law system does not recognize hypothecs on moveables. Or what is the French equivalent of "beneficial interest" ? The difficulty of translating legal term compounds the many problems arising from the need to find non-existing equivalents of technical terms. There have been attempts in the past to translate one term by another which does not exactly correspond to the first.[2] The interpretation difficulties this can lead to will be discussed hereinafter in 3.41 to 3.47.

The Translation Bureau has been attempting to avoid such difficulties

---

1. Remarks made to one of our interviewers by an official who requested anonymity, and will be referred to hereinafter as Official X.
2. Id.

by italicizing in their original language terms which could not directly translated.[1]

3.08 Problems of the Translation Bureau.-

The final English draft of federal statutes is translated into French by the Translation Bureau. In addition to the difficulties inherent in the translation of technical and legal terms, the conditions under which the Bureau appears to operate also contribute to the poor quality of the French version of federal statutes. The Bureau is not a part of the Department of Justice and receives many assignments from other government departments. It cannot devote to the translation of statutes all the time necessary for this arduous task.[2] The Bureau employs no specialists in the fields covered by individual statutes. The original English version, on the other hand, is drafted either by, or with the help of, experts in the particular fields under consideration. The Translators at present cannot rely upon any such assistance.[3] The Bureau is also given very little time for in which to translate the English draft. These problems are increased by, and partly the result of, the difficulty of recruiting competent translators.[4] Applicants for employment with the Bureau must have either a university degree or two years' experience in translation or language teaching. They

---

1. Id.
2. Id.
3. Id.
4. Id. and also interview with another official who also requested anonymity and who shall be referred to hereinafter as Official Y

They are required to pass oral and written examinations in translation. The shortage of trained translators is explained to some extend by the fact that at present in Canada there are only two schools offering courses of training for interpreters and translators; McGill University in Montreal and Université de Montréal. Details of the training they provide are to be found in Annex III-A of this chapter.

3.09 Poor quality of French version of federal statutes.-

" Avec des mots français il font des lois anglaises" ,[1] Rivard, as we have seen, was wrong, federal statutes are not badly drafted English laws, but poorly translated English laws. Anyone who has examined the French text of any federal statute, even in the most perfunctory manner, has become painfully aware not so much of grammatical errors as of the totally non-latin and non-idiomatic use of language. In fact, the French text is frequently almost incomprehensible to a French lawyer. The reason was best explained by Adjutor Rivard:[2]

> "Le développement qu'un Anglais, par exemple, aime à faire d'une idée ne ressemble guère à ce qu'il plairait à un Français d'en tirer. La mentalité, la tournure d'esprit, la méthode sont différentes. On peut avoir pris possession de l'idée d'une loi telle qu'exprimée dans une langue, et ne pouvoir la rendre que fort mal dans une autre. A moins que les deux idiomes aient un génie commun et que les procédés intellectuels des deux peuples soient identiques, toute tentative de traduction sera vaine, si elle n'est pas précédée d'une assimilation complète de la notion légale à transplanter; et cela comportera nécessairement des altérations essentielles, le développement d'aperçus nouveaux, l'ordonnance de l'ensemble et des détails suivant une économie différente, en somme une conception nouvelle de la loi, avec tous les changements nécessaires pour qu'elle convienne à une autre manière de penser, de faire et de dire. Toute autre méthode d'emprunt sera féconde

---

1. In De la technique législative (1922-23), 1 R.du D. 355, reprinted in Le Devoir, Montréal, April 17, 1965, p.5.
2. loc.cit.

en conséquences déplorables."

Commenting upon Rivard's thesis, André Dufour, professor of public law at Laval University, wrote :[1]

> " . . . On ne pourra jamais empêcher que la législation fédérale soit d'inspiration anglaise, soit le reflet de la culture britannique et quelle que soit la qualité du texte français, il n'en demeurera pas moins un hors-d'oeuvre, une gentillesse, une faveur qui sera vite oubliée dès que les problèmes sérieux se poseront c'est-à-dire lorsqu'on appliquera la loi. On peut peut-être en arriver à réduire enfin les lois fédérales en français mais on n'en fera jamais une loi de culture française."

3.10 Proposed solution: The Pearson - Lesage correspondence.-

Only a short while before Prof. Dufour's comments appeared, Quebec's Premier, Jean Lesage, on Tuesday, April 6, 1965 , read to the Legislative Assembly on exchange of correspondence with Prime Minister Pearson on the subject of improving the drafting of federal statutes in the French language.[2] The Quebec Premier had written:

> ". . . Je prends connaissance à l'instant des grandes lignes du rapport préliminaire de la Commission d'enquête sur le bilinguisme et le biculturalisme. . .
>
> Je vois que l'on ne propose encore aucune mesure concrète. Il en est une que je crois devoir vous suggérer immédiatement. C'est que, pour bien marquer à la fois le caractère bilingue du pays et l'égalité des deux langues,

---

1. Le Devoir, April 17, 1965, p.5.
2. Débats de l'assemblée législative, April 6, 1965, pp.1848-1849.

le gouvernement féderal adopte dans la publication des lois, la méthode suivie par ma province depuis 1941, savoir le recueil bilingue présentant sur la même page, les deux textes en regard l'un de l'autre.

' La décision que vous venez de prendre en vue de la publication d'une nouvelle refonte des lois du Canada, me paraît être une occasion éminemment favorable pour apporter cette amélioration. C'est d'ailleurs le meilleur moen d'en venir sur ce point à respecter vraiment la Constitution.

' Vous n'ignorez pas que, même si les deux versions des lois du Canada ont en théorie la même valeur, le fait est que la rédaction ne se fait qu'en anglais, et le texte français n'est qu'une traduction souvent inintelligible et généralement non conforme au génie de la langue, parce que l'on exige qu'elle soit littérale pour ne pas dire servile. Le seul moyen de parvenir à une rédaction française acceptable, c'est de donner aux responsables du texte français la situation de rédacteur et non pas simplement celle de simple traducteur. En effet, il est impossible de préparer de façon également satisfaisante dans chaque langue un texte législatif bilingue si l'on ne consent pas à tenir compte des particularités de l'autre langue dans chacune des deux versions, comme nous le faisons au Québec."

On March 19th, Prime Minister Pearson replied:

". . .J'ai lu avec grand intérêt votre lettre du 25 février au sujet de la publication des Statuts du Canada. Je suis tout à fait en faveur des propositions que vous avancez. Le ministre de la Justice m'informe qu'il s'est déjà penché sur ce problème avec le concours des fonctionnaires de son ministère et qu'il désire apporter toutes les améliorations possibles non seulement en ce qui a trait au format des deux versions, mais également à la qualité de la version française dans les Statuts du Canada.

" La revision et la codification des lois publiques générales du Canada ont été confiées par le Parlement à une Commission de revision des statuts que doit nommer le Gouverneur en conseil, et je crois qu'il serait dans l'ordre que la dite commission étudie cette question. Le ministre de la Justice est membre d'office de la commission et il m'assure qu'il demandera à la commission , le plus tôt possible après son établissement, de bien vouloir apporter une attention spéciale au format et à la qualité de la version française.

" Je suis au courant de la pratique suivie au Québec, concernant la publication des Statuts provinciaux et de certaines modifications apportées au cours des dernières années dans le but d'assurer que les deux versions des Statuts réflètent l'esprit de la loi aussi fidèlement que possible. Il est par conséquent probable que la Commission, lorsqu'elle étudiera cette question, désirera consulter certains de vos fonctionnaires et conseillers afin d'obtenir leur avis et de profiter de leur expérience."

3.11 Proposed solutions by the officials of the Translation Bureau.-

An official of the Translation Bureau, who was interviewed [1] admits that the work of the Bureau is far from perfect. He believes that it is impossible to resolve the problem within the existing framework. He recommends that the drafting of both the English and French versions be done simultaneously. The Deputy-Minister of Justice advised us that he considered such scheme impractical.[2] An alternative suggestion by the same official of the Bureau is that translators should at least be present during

---

1. Official X referred to hereinabove.
2. As will be seen in 3.27 , most Federal officials who expressed a view on the subject, consider simultaneous drafting utopian.

the preparation of the original English draft in order that they may be more fully acquainted with the subject matter being legislated upon as well as the spirit in policy in which the legislation is conceived. We are inclined to believe that this is a stop-gap solution which deserves consideration. It might also enable the translator to advise as to more easily translatable English drafts.

3.12 Proposed solutions: Plans of the Department of Justice.-

We are advised by the Deputy-Minister of Justice that no improvements are planned until the next revision of the federal statutes in 1967. But there are plans to create two new senior positions to be filled by lawyers trained in civil law and fluent in both languages. These persons will be charged with the revision of the French texts of the statutes. Furthermore, a translation staff will be added to the Department of Justice and their work will be revised by these two new officials.

3.13 Publication of Federal Statutes in both languages.-

Federal statutes must be published in both languages pursuant to s. 133 of the B.N.A. Act. Provisions for such publication are to be found in the Rules and Orders of the House of Commons[1] and in the Rules and Orders of the House of Senate as well as in An Act Respecting the Publication of the Statutes.[2] At the present time, both the annual federal statutes and the revised statutes are printed in separate English and French editions. We have seen (in 3.10) that Premier Jean Lesage of Quebec recommended to the Prime Minister of Canada that Ottawa follow the Quebec example of printing French and English versions of statutes side by side. This would obviously make cross reference between the two versions much easier and would

1. Standing Order No. 74. cf. 13.05 (a)
2. 1952 R.S.C. ch. 230, s. 10 (3).

undoubtedly result eventually in an improvement of the quality of both English and French versions.[1] In his reply, Prime Minister Pearson did not commit himself. We have been given to understand by the Deputy-Minister of Justice that at the time of the revision of federal statutes in 1967, but not before, both the English and French texts will be printed adjacent to each other, as is now done in Quebec, rather than in separate volumes, as is required by the Act Respecting the Publication of Statutes.[2] However, there is no plan to print any of the annual volumes in this matter for this procedure is considered far too expensive according to the Deputy-Minister of Justice. On the basis of the experience of Quebec practitioners and Quebec draftsmen of bilingual statutes we are inclined to believe that such added expense would be a very small price to pay for the improvements which might result from printing both versions side by side.

It would appear that private bills in the federal parliament are not printed in separate French versions for alleged lack of demand. The official French version is only printed when the annual volume of the statutes is printed. There is thus a period of time when private bills which have been presented in English are only available in the latter language.

---

1. John D. Honsberger, "Bilingualism in Canadian Statutes" [1965] 43 Can. Bar Rev. 319 at p. 335.
2. R.S.C. 1952, c. 320, s. 10.

B - THE DRAFTING AND PUBLICATION OF QUEBEC STATUTES

3.14 The drafting of Quebec Statutes.-

There is no centralized drafting of Quebec statutes as is the case with federal statutes which are all drafted in the Department of Justice. We have been given to understand[1] that many statutes are drafted presently either by, or with the collaboration of, the legal adviser of the Quebec Cabinet. But essentially statutes are drafted by the Department concerned[2]. As a rule all public bills are drafted in French and then translated.[3] Private bills which are sponsored by various individuals, organizations or corporations are not normally drafted by government entities, but rather by the attorneys and officials of the sponsor. These bills are drafted in either language in almost equal proportions[4]. The criterion for private bills seems to be the language of the draftsmen. One problem peculiar to the drafting of Quebec statutes and which was stressed by various officials interviewed is the need for co-ordination with existing federal and provincial legislation. Quebec draftsmen attempt to preserve terminological uniformity. As the Special Legal Officer of the Legislative Committee stated to us[5], a word used 4 or 5 years earlier in a statute should not be used in a different manner in a new law; a term appearing in the Civil Code should not be given a different meaning in a statutory provision; if at all possible, provincial laws preserve the terminology of comparable or

---

1. Interview with Mr. Alec P. Grigg, Special Legal Officer of the Legislative Committee of the Quebec Legislature at Quebec on August 27, 1965.
2. Interview with Mr. A.P. Grigg, supra; and interview with Mr. Jacques Prémont, Clerk of the Executive Council at Quebec on August 26, 1965.
3. Interviews with Messrs. Grigg and Prémont and with Mr. Gilles Paradis, Translator with the Legislative Committee of the Quebec Legislature on August 26, 1965.
4. Interview with Mr. Gilles Paradis, supra. 5. (next page)

analogous federal statutes. But this process is fraught with dangers and even the French versions of Quebec statutes are subject to the same linguistic criticisms as are the French translations of federal statutes. Complaints about improper use of words, "anglicismes" and grammatical or stylistic carelessness are frequent.[1] The recently created Office de la Langue Française is compiling a juridical vocabulary and is designed to give advice in linguistic matters to draftsmen with whom it collaborates. It apparently has 200 index cards covering frequently used legal terms. But its work is impeded by the lack of personnel with legal training.[2] But this Office de la Langue Française is essentially a linguistic organization and not a translation bureau.

3.15 Translation of Quebec statutes.-

Since public laws in Quebec are normally drafted in French, the translation process is basically one of rendering a competent English version of the French draft. Translation in Quebec is decentralized, each department having its own translator.[3] No serious attempt has yet been made to organize a central translation bureau as there is in Ottawa. We are advised, however, that in the course of the summer of 1965, the Quebec Government employed an officer who had been previously with the Defence Department in Ottawa for the specific purpose of organizing a central system of translation.

---

5. (from previous page): Mr. A.P. Grigg, supra.

---

1. For a comprehensive discussion of common grammatical errors found in French texts, statutes, and speeches, see inter alia the following: Hon. E.F. Surveyer, Le français au prétoire (1938-39) 17 R. du D. 194, J.C. Bonenfant, Une nouvelle traduction de notre constitution (1944) 4 R. du B. 35; Jean Martineau, Une grande pitié (1951-52) 54 R. du N. 150; L.J. de la Durantaye, Les éléments de la clarté législative, (1952) 12 R. du B. 113; Hon. O.S. Tyndale, Comments on the Revision of the Code of Civil Procedure (1952) 12 R. du B. 201; Alfred Nadeau, Coup d'oeil sur la rédaction française de nos lois municipales (1957) 17 R. du B. 137; Alfred Nadeau, Le français dans les procédures municipales (1960-61) 63 R.du N.185.
2. (next page). 3. (next page).

As at the end of August, 1965 she was still the only person employed in this project except for a translator from English to French. It should also be noted that the Legislative Committee of the Quebec Legislature, which prior to 1960 had no legal officer or translator in Quebec City, now appears to have adequate translating facilities: there are now two English translators, two English law officers (and there is a possibility of a third one being added), as well as two French translators.[1] The main difficulty encountered in Quebec as well as in Ottawa is the dearth of competent translators. The Special Legal Officer[2] of the Legislative Committee of the Quebec Legislature pointed out that ordinary translators do not have the required legal background to translate statutes which only trained lawyers could translate adequately. But, few lawyers want to be translators. This is the crux of the entire problem of legal translation at all levels, both in Quebec and in Ottawa. We will have occasion to return to the problem in our discussion of the drafting of subordinate legislation[3].

---

2. (from previous page): Interview with Gilles Leclerc, head of Le Service de Terminologie, l'Office de la Langue Française, at Quebec, August 27, 1965.
3. (from previous page): Interview with Mr. Jacques Prémont, supra.

---

1. Interview with Mr. A.P. Grigg, supra.
2. Mr. A.P. Grigg, supra.
3. cf. 3.24 (f).

3.16 Publication of Quebec statutes.-

Section 133 of the B.N.A. Act requires that Quebec statutes be published in both languages. It is the only problem subject to this constitutional requirement. This obligation is implemented by various Quebec statutes. Section 14 of the Interpretation Act[1] states:

> "As soon as any statute is assented to, or, if it had been reserved, as soon as the assent thereto has been signified, the Clerk of the Legislature shall deliver a certified copy thereof in French and another in English to the Queen's printer, who shall print the same."

Section 33 declares:

> "As soon as practicable after the prorogation of every session, the Clerk of the Legislature shall procure from the Queen's printer a sufficient number of bound copies of the statutes. He shall deliver to the Lieutenant-Governor a copy in the English and French languages, for transmission to the Governor-General, as required by the British North America Act, 1867, together with certified copies, in the English and French languages, of every bill reserved for the signification of the pleasure of the Governor-General. He shall also deliver a copy of the statutes, in the English and French languages, to the Provincial Registrar."

Similarly art. 4 of the Civil Code reads:

> "An authentic copy, in French and English, of the statutes assented to by the Lieutenant-Governor, or the assent to which has been published as required by article 2, if a reserved act, is furnished by the Clerk of the Legislature to the King's printer, whose duty it is to print the number of copies indicated to him by the Lieutenant-Governor in Council and distribute them to those

---

1. 1964 R.S.Q., c. 1.

> persons designated by orders in council and to the members of the Legislative Council and Legislative Assembly according to the joint resolution of the two Houses."

The 1960 Act respecting the Revised Statutes [1] provided that the Attorney-General shall

> "cause such laws to be printed so that the French and the English texts shall be opposite one another, on the same page, the French in the left column and the English in the right column, and have the same bound through the instrumentality of the Queen's Printer."[2]

Since 1942 it has been the practice in Quebec to print the English and French versions of any statute side by side, either on the same page or on opposite pages[3]. In fact, all versions of Quebec statutes (first, second and third readings, as well as the version eventually sanctioned) are printed and issued in this manner, as are the annual printed volumes and the recent 1964 provision of all Quebec statutes.[4]

---

1. 1959-60 8-9 Eliz. II, c. 27.
2. s. 1 (d)
3. cf. Honsberger, op. cit., p. 321, and letter by Quebec Premier Jean Lesage to Prime Minister Pearson, quoted hereinabove in 3.10.
4. for the rules of the Quebec Legislature : cf. 13.20 (b)

DIVISION III

SUBORDINATE LEGISLATION

A - THE DRAFTING AND PUBLICATION OF FEDERAL SUBORDINATE LEGISLATION

I. INTRODUCTION

3.17 Importance of subordinate legislation.-

Subordinate legislation, or delegated legislation, or administrative law, as it is also called, has assumed a fundamental place in the administration of public affairs. Griffith and Street[1] have described this development in the following terms:

> "The growth of Subordinate Legislation in the nineteenth and twentieth centuries is the inevitable consequence of fundamental changes in the theory and practice of government. More and more functions have been acquired by central and local government authorities; the performance of these functions requires legislative and administrative power; and the Governments have found themselves unable to submit to Parliament the full details of their administrative intentions. This inability has been due to many factors. One has been the shortage of available parliamentary time; another has been the difficulty of administring, especially in a new field, a scheme the details of which are largely contained in an inflexible statute. Solvitur ambulando is often the only answer that can be given. The opponents of Subordinate Legislation have been many and vociferous. But the question of its desirability is far more a matter of politics and of administrative law."

Yet, despite its great importance, subordinate legislation has not yet received from political scientists and jurists the attention it deserves. For instance, in Canada, there has not been one single satisfactory textbook published on the subject.[2]

---

1. J.A.J. Griffith, and H. Street, Principles of Administrative Law, - London, 1952, p.

2. The best general description of the field is an article by E.A. Driedger, "Subordinate Legislation", 1960, 38 Can. Bar Rev.,p.1.

Nor does there appear to be any study of the manner in which this legislation is drafted and published.

3.18 Purpose of the present study.-

The purpose of the present study in this almost totally unexplored field is primarily to determine linguistic practices followed in the drafting and publication of this subordinate legislation. We are concerned with establishing the language or languages used to draft administrative law, the manner in which it is translated, the extent to which it is published in one or both languages, and the various problems which arise from legislating at this level for a bilingual country.[1]

3.19 Methods of research.-

Our methods of research have been threefold. First of all, we have studied the pertinent legislative texts and court decisions. Secondly, we have conducted a number of interviews in Ottawa with various government officers, particularly in the Department of Justice, who are or have been concerned with the drafting and publication of subordinate legislation. Thirdly, we sent a detailed questionnaire on the subject to all government departments and to some fifty agencies of the Federal Government empowered to make subordinate legislation. The list of departments and agencies to which the questionnaire was sent and which replied is attached hereto as annex III-B. A copy of the questionnaire itself is appended as annex III-C. The questionnaire was prepared after interviews at the Privy Council Office and various Government departments, especially the Department of Justice. It was reviewed by the Deputy-Minister of Justice for accuracy and completeness before being sent out. Virtually all the departments and agencies

1. cf. 2.02 for our view that there are no constitutional provisions requiring subordinate legislation either at the federal level or in Quebec to be bilingual, since s. 133 of the B.N.A. Act is limited to traditional legislative processes.

to whom the questionnaire applied eventually replied. The answers were generally satisfactory, and seem to have been prepared by competent officers. The questionnaire dealt with the following questions:

1. the types of subordinate legislation issued by the department concerned;
2. the role of the Department of Justice in drafting this legislation;
3. the language of the original draft of the various types of subordinate legislation and the reason for the department's practices;
4. the translation facilities used;
5. delay between publication of the English and French versions;
6. linguistic knowledge of the legal advisers of the departments;
7. problems created by simultaneous drafting and publication in two languages.

The answers received have been tabulated and the statistical results will be reviewed hereinafter.

3.20 Classes of federal subordinate legislation.-

Subordinate legislation appears in many forms: regulations, rules, orders, by-laws, ordinances, orders-in-council. In Canada, however, the term "regulation" is generally used to define all forms

of subordinate legislation falling within the terms of the Regulations Act[1], just as in Great Britain, the terms "statutory regulations" is used widely. In practice, the term "regulation" is used to describe a form of subordinate legislation having a general application. An "order" usually refers to a particular case. Sometimes the term "order" refers to the order-in-council or order of the Privy Council authorizing and establishing a regulation or order. The term "rule" usually applies to procedural matters, but has been used in other contexts. The terms "by-laws" and "ordinances" are generally used to describe the rules of a particular organization, board or commission. In Canada, the basic division in the field of subordinate legislation is made by the Regulations Act itself. In other words, the basic distinction is between subordinate legislation which is covered by the Act and that which is not. There are several reasons for the fact that the Regulations Act does not cover all subordinate legislation. One of them is that the whole field is still at the stage of development and no firm rules exist. Secondly, the definition of the term "regulation" in the Regulations Act is at best an arbitrary one and does not encompass every possible type of subordinate legislation. This definition reads as follows:[2]

> " 'Regulation' means a rule, order, regulation, by-law or proclamation
>
> (i) made, in the exercise of a legislative power conferred by or under an Act of Parliament, by a Governor in Council, the Treasury Board, a

1. 1952 R.S.C. c. 235.
2. Section 2 (a) of the Act.

Minister of the Crown, or a Board, Commission, Corporation or other body or person that is an agent or servant of Her Majesty in right of Canada, or

(ii) for the contravention of which a penalty of fine or imprisonment is prescribed by or under an Act of Parliament, but does not include

(iii) an ordinance of the Yukon Territory of the Northwest Territories,

(iv) an order or decision of a judicial tribunal,

(v) a rule, order or regulation governing the practice or procedure of any proceedings before a judicial tribunal, or

(vi) a rule, order, regulation or by-law of a corporation incorporated by or under an Act of Parliament unless the rule, order, regulation or by-law comes within sub-paragraph (ii);"

Obviously this definition does not include the very large body of less formal regulations issued by various government bodies, either for their internal regulation, or on an ad hoc basis, or as instructions or guides to the actions either of officials or citizens. It is extremely difficult to draw the line between an order of general application and an order or instruction to a government official, such as a Customs Officer or an Official of the Post Office. At first sight, such order or instruction might seem to be simply a matter of internal administration, but, in fact, it may have very broad and immediate practical consequences and may well affect the rights of citizens at large. Therefore, no study of subordinate legislation can limit itself to those regulations defined by the Regulations Act and we have not restricted ourselves to the Act. Another distinction which must be made is between

regulations which are published in the Canada Gazette and those which are not or need not be so published.[1] Part II of the Canada Gazette publishes all statutory regulations as defined by the Regulations Act. However, s. 9 of the Regulations[2] issued under the Regulations Act, exempts a certain number of regulations from publication in the Gazette:

> "9. Pursuant to section 9 of the Act the following regulations or classes of regulations are hereby exempted from the operation of section 3, section 4, subsection (1) of section 6 and section 7 of the Act:
>
> (1) Aeronautics Act - Orders made by the Air Transport Board that do not apply to all carriers or to a class of carrier.
>
> (2) Atomic Energy Control Act - Orders made by the Atomic Energy Control Board under the Atomic Energy Regulations of Canada.
>
> (3) Canada Grain Act - Orders made under section 11 and orders as defined in section 16.
>
> (4) Canadian Wheat Board Act - Orders made by the Canadian Wheat Board as specified hereunder:
>
> (a) Orders entitled 'Instructions to the Trade';
>
> (b) Orders addressed to particular persons or corporation only, requiring them to do or to refrain from doing specified things;
>
> (c) Orders adjusting grain storage quotas at delivery points according to the availability of storage space from time to time; and
>
> (d) Orders providing for the allocation of railway cars available for the shipment of grain at delivery points.
>
> (5) Financial Administration Act - Regulations that

---

1. The operations of the Canada Gazette are discussed in 3.29.
2. Canada Gazette (Part II) December 8, 1954.

deal exclusively with matters of internal practice and procedure within the Public Service, that do not impose fines or penalties, and that are restricted in their application to persons within the Public Service.

(6) Indian Act - Regulations and orders for the control and management of Indian reserves and property, residential and day schools, procedure at band and band council meetings, and generally in respect of all matters of a local or private nature within reserves.

(7) National Defence Act - Regulations for the organization, training, discipline, efficiency, administration and good government of the Canadian Forces, that are registered in their effect to members of or persons attached to the Canadian Forces.

(8) Penitentiary Act - Regulations made under section 7.

(9) Prisons and Reformatories Act - All regulations made under the Act.

(10) Post Office Act - Orders made by the Postmaster General for the guidance and government of officers and employees of the postal service.

(11) Railway Act - By-laws, rules and regulations made by the Canadian National Railways under section 290 and 300.

(12) Railway Act and other related Acts - Rules, orders and regulations of the Board of Transport Commissioners for Canada made in the exercise of any power conferred on the Board by the Railway Act or any other Act.

(13) Royal Canadian Mounted Police Act - Orders and regulations relating to the organization, discipline, administration and government of the Royal Canadian Mounted Police, that are restricted in their effect to members of or persons attached to the Royal Canadian Mounted Police."

The first question of the questionnaire was designed to establish which of the following types of subordinate legislation the department or agency concerned issued:

(a) Those approved by the Cabinet pursuant to the Regulations Act upon the recommendation of the Minister.

(b) Those issued directly by the department pursuant to the Regulations Act.

(c) Those excluded from publication in the Canada Gazette by s. 9 of the Regulations passed pursuant to the Regulations Act.

(d) Internal regulations not covered by the Regulations Act.

(e) Regulations not covered by the Regulations Act, but affecting the general public.

We presumed that regulations of type (b) would also be published in the Canada Gazette and have found that this was in fact the case with the exception of those emanating from the Department of Veterans' Affairs. In subsequent questions these five categories were reduced to three:

(a) Regulations published in the Canada Gazette, (including, thus, the first two categories).

(b) Regulations exempted from publication in the Gazette.

(c) All external and public regulations not covered by the Regulations Act.

It should also be noted that in question 1 all departments and agencies were required to indicate how many regulations of each type they had issued in the previous twelve months. The results, tabulated in Annex III-D, were the following:

(a) Regulations approved by the Cabinet.- As will appear from Annex III-D , of the 19 government departments replying, 17, that is all but two replied that they made such regulations. Of 7 intermediate agencies which replied, 5 made regulations within this category. Of the 24 boards and commissions replying, 16, or less than half, made such regulations.

(b) Regulations issued under direct authority.- Ten departments out of 19 answering stated that they made regulations under the authority of their Minister (regulations of all these departments except the Department of Veterans' Affairs being published in the Canada Gazette). No intermediate agency had such authority, and only 2 boards out of 24 replying made regulations under the direct authority of the head of their organization.

(c) Regulations exempted from publication in the Canada Gazette.- Four departments out of 19 stated that they made this type of regulations. Two out of 7 subordinate agencies did so too, and 5 out of 24 boards and commissions.

(d) Internal regulations not covered by the Regulations Act.- In this category, 9 out of 19 departments answered in the affirmative; 4 out of 7 intermediate agencies and 13 out of 24 boards.

(e) Regulations affecting the public not covered by the Regulations Act.- In this category we find 9 departments out of 19; not a single intermediate agency; and 9 out of 24 boards. The most significant finding is that there are considerable numbers of regulations which are in fact or in law exempt from publication and about which citizens did not find out anything except by inquiries from the Departments concerned and hoping that the answer will be accurate.

II. DRAFTING AND TRANSLATION OF SUBORDINATE LEGISLATION.

3.21 The drafting process in general: search for uniformity.- While all federal statutes are drafted by the Department of Justice since 1940, there is no such centralized drafting for subordinate legislation. As a rule, this delegated legislation is still drafted in each department and agency concerned.[1] In virtually every department and in the great majority of agencies and Crown corporations, there are a number of legal officers (officers with a law degree and generally members of the Bar) whose entire work lies in the field of law. They handle the bulk of the routine legal work of the department and agency. Such work has traditionally included the preparation of regulations to be issued by the Department either under the Minister's own authority or by submission to the Cabinet for an order-in-council. The legal officers work in close conjunction with the technical specialists in their departments who provide them with much of the information needed to draft regulations and determine its form.[2] The essential characteristic, thus, of the drafting of subordinate legislation is its total de-centralization. The only general official directive available is a so-called "Memorandum to Government Departments and Agencies", dated April 21, 1964, and issued by the then Clerk of the Privy Council, Mr. R.G. Robertson. Even this Memorandum was more concerned with seeing that each recommendation to the Cabinet is

1. Interview with the Deputy Minister of Justice, May 26, 1965.
2. The linguistic competence of these legal officers is surveyed in s. 3.24 (g)

presented upon proper authority, than with drafting as such. The Memorandum piously enjoined each department and agency to draft clearly and simply and requested that lengthy material required to be included in the executive part of an order-in-council be submitted in the form of an annex to the recommendation. The most explicit statement concerning drafting is to be found in paragraph 9 which states:

> "It is suggested that, in drafting such a recommendation, Departmental Officials consult not only the previous recommendation of a similar type, but also the Order-in-Council resulting from the previous recommendation."

There is thus evidence that the Privy Council wants to keep regulations from all departments and agencies as uniform as possible. Paragraph 12 of the Memorandum requests officials preparing recommendations to consult with their legal advisers to ensure that the recommendations meet with the requirements of the law. Paragraph 14 refers Departments to section 4 of the Regulations issued under section 9 of the Regulations Act,[1] which reads as follows:

> "Two copies of every proposed regulation shall, before it is made, be submitted in draft form to the Clerk of the Privy Council who shall, in consultation with the Deputy Minister of Justice, examine the same to ensure that the form and draftsmanship thereof are in accordance with the established standards."

Section 4 means that insofar as regulations which are to be published in Part II of the Gazette are concerned, the Department of Justice has, in law, a certain role to play. The nature and extent of this role will be discussed at length in 3.22

1. SOR/54-569, P.C. 1954-1787.

Paragraph 16 of the Memorandum requests departments and agencies to send five copies of the proposed regulations to the Privy Council Office in English, and two in French. Prior to this Memorandum, and under s. 5 of the Regulations, five copies were required in English and only one in French. Paragraph 17 of the Memorandum refers to one of the most important innovations in the practice of drafting subordinate legislation: the so-called Canadian Bill of Rights Examination Regulations designed to ensure conformity of subordinate legislation with the Canadian Bill of Rights. These regulations read as follows:

> "Examination of Proposed Regulations
>
> "4. A copy of every proposed regulation submitted in draft form to the Clerk of the Privy Council pursuant to the Regulations Act shall, before the making of the proposed regulation, be transmitted to the Deputy Minister of Justice by the Clerk of the Privy Council.
>
> "5. Forthwith upon receipt of the copy of a proposed regulation transmitted by the Clerk of the Privy Council pursuant to section 4, the Minister shall
>
> (a) examine the proposed regulation in order to determine whether any of the provisions thereof are inconsistent with the purposes and provisions of the Canadian Bill of Rights; and
>
> (b) cause to be affixed to the copy thereof so transmitted by the Clerk of the Privy Council a certificate, in a form approved by the Minister and signed by the Deputy Minister of Justice, stating that the proposed regulation has been examined as required by the Canadian Bill of Rights;
>
> and the copy so certified shall thereupon be transmitted to the Clerk of the Privy Council."

This recent Memorandum is obviously designed to improve the

standards of drafting of subordinate legislation at least of that which is required to be published in the Canada Gazette. It must be noted, however, that apart from the provision requesting five copies in English and two in French, little is said about language. The need to submit recommendations in both languages is in conformity with s. 3 (i) of the Regulations issued under the Regulations Act:

> "Part Two of the Canada Gazette shall continue to be published by the Queen's Printer under the title 'Statutory Orders and Regulations' on the second and fourth Wednesday of each month in separate editions in the English and French languages."

We have also noted in 3.20 that the whole category or regulations need not be published in the Canada Gazette.

3.22 Role of the Department of Justice: attempt at increased control.

We have seen that at the present time the overwhelming bulk of subordinate legislation is drafted directly by the department or agency concerned. We have also noted the limited role of the Department of Justice and of the Privy Council. The Deputy-Minister of Justice indicated to us in the course of an interview that he believed that it might be better if regulations were drafted by the Department of Justice. There is evidence that the Department of Justice has attempted recently to increase its control over the drafting of subordinate legislation. This has been the explicit policy of the Deputy-Minister and a considerable amount of progress appears to have been made. In particular, one officer of the Department of Justice has for the past four or five years been

receiving the drafts of all regulations to be published in the Canada Gazette, Part II. She is in constant contact with the departments and agencies involved and with the Office of the Clerk of the Privy Council. Officially, her duties are no more than the nominal duties set forth in s. 4 of the Regulations issued pursuant to the Regulations Act. But the amount of work she does and the manner in which she conducts it are at the discretion of the Department, and under control of the present Deputy-Minister the Department has adopted a policy of greatly increased control and intervention. Although drafts of all proposed regulations are sent to the Department of Justice for verification, supposedly only of style, in the last few years there has been a tendency for the Department to make considerable substantive changes where the officer involved considered such changes necessary to give clarity to the text. Also, a growing number of regulations are actually drafted in the Department of Justice, although, at this stage still, as will be seen from the figures cited in the present section, the work of the Department is largely limited to revision of the regulations presented to it for verification before presentation to the Cabinet or to revision of the whole body of regulations of an individual department or agency. Insofar as the language practices of the Department are concerned, we are informed that when the initial draft of a proposed regulation is submitted to the Department, it is almost invariably in English only. All the work done in the Department of Justice is in the English language only with the possible exception of letters patent referring to Quebec. The

officer involved in this revision practically never sees the French text and when she does, she must have a translation. After verification by the Department of Justice, the regulations are returned to the original department and immediately submitted to the Privy Council where, subsequent to further verification for conformity with the Bill of Rights, the regulations are presented to the Cabinet. The senior officials of the Department feel that translation at the initial stage of verification by the Department of Justice are not feasible because it would slow down the process and could create many difficulties in emergencies requiring swift departmental action.[1]

The second question of our questionnaire was designed to determine statistically the role of the Department of Justice in drafting subordinate legislation. Distinguishing between the above-mentioned three general categories of regulations, we asked each department, intermediate agency and board to tell us whether the Department did the drafting, did a revision of existing regulations, or performed any other role. As will appear from annex III-E the replies were as follows:

(a) Regulations published in the Canada Gazette.- Nineteen departments replied. Only one, the Department of Finance, stated that the Department of Justice performed the entire drafting. Seventeen departments replied that the role of the Department of Justice was confined to revising their drafts. Of the 7 intermediate agencies

---

1. Most of the information in the present section has been obtained in an interview with the Deputy-Minister of Justice and with various other officials of the Department. The rest is based on our questionnaire.

replying, 4 stated that the Department of Justice did the work of revision only. The Civil Service Commission said that all the drafting was done by the Department of Justice. Of the 24 boards and commissions replying, 6 stated that the Department was only involved in the revision of their regulations. The Dominion Coal Board alone stated that all its drafting was done by the Department of Justice while the Farm Credit Corporation stated that the Department did all its drafting and revision.

(b) Subordinate legislation exempted from publication in the Gazette.-

Out of 19 departments replying, 3 stated that the Department of Justice was not involved at all, and 2 that it performed the work of revision only.[1] Of the 7 intermediate agencies, the 2 which replied to this question stated that the Department was not, in any way, involved. Four of the 24 boards and commissions also replied that the

---

[1]the Department of Finance said that all its drafting was done by the Department of Justice.

Department of Justice was not involved in this type of legislation. Fifteen did not answer.

(c) Regulations not covered by Regulations Act.- Of 19 departments, 4 stated that the Department of Justice was involved in the revision only, and 11 that it was not involved at all. The 4 intermediate agencies replying to this question stated that the Department of Justice was not involved at all. All the boards and commissions replying also stated that the Department of Justice was either not involved in the drafting of legislation in this category or that the question was not applicable to them.

It would thus appear that although the Department of Justice desires to exercise increased control over the subordinate legislation, it has either failed to achieve much success or has not tried very hard. It is practically never involved in the actual drafting. Its role seems to be confined to the revision of regulations which are important enough to be published in the Canada Gazette. Furthermore, this role is played rarely with respect to intermediate agencies and boards and commissions despite the fact that 17 out of 22 Government departments

resort to the Department of Justice for revision. The Department is practically not involved in the drafting or revision of any other type of subordinate legislation. We have not ascertained whether this was the result of a deliberate decision or circumstances.

3.23 Role of the Privy Council.- A second office that plays a considerable role in the preparation of regulations to be published in Part II of the Canada Gazette is the office of the Clerk of the Privy Council, or more particularly, the Deputy-Clerk of the Privy Council and the prominent translator who assists him in his work. We have seen (in 3.21) that pursuant to s. 4 of the Regulations issued under the Regulations Act, and also pursuant to the instructions issued in the 1964 Memorandum from the office of the Clerk of the Privy Council, all regulations which must be submitted to the Cabinet and will be published in the Canada Gazette, must be first presented to the Clerk of the Privy Council. The work of the office of the Assistant-Clerk of the Privy Council consists in far more than merely receiving drafts of proposed regulations and presenting them to the Cabinet. In fact, the Assistant Clerk makes changes both before presentation to the Cabinet and after. Once the regulation has been approved, the Assistant-Clerk and the translator who assists him, act as virtual editors of Part II of the Canada Gazette, and oversee its preparation and publication. But before pre-

sentation to the Cabinet, these two officers must prepare the orders-in-council which will authorize the regulation and they will also perform a final revision and co-ordination of the English and French texts. The regulations which are to be published in the Canada Gazette must be presented to the Clerk in both English and French. Indeed, a great part of the work of the Assistant-Clerk and of the translator consists in revising and co-ordinating these two texts before their submission to the Cabinet. This revision appears to be necessary, either because the French translation is faulty or of doubtful juridical value, or because the prior revision in the Department of Justice has not been adequate. This appears to be the case particularly when Agencies rather than Departments are involved, since the former do not have as close links with the Department of Justice as do most Departments. This work of revision by the assistant clerk is performed with the help of a translator permanently seconded to his office and who is mainly concerned with the French texts. Both officers have legal training.

3.24 Language used to draft Subordinate Legislation:normally English.-

The third and fourth question of the questionnaire were designed to determine the language used in drafting Subordinate Legislation

(a) published in the Canada Gazette

(b) exempted from publication in the Canada Gazette

(c) not covered by the Regulations Act

and the reasons for such choice. Six possible reasons were provided to simplifythe work of the respondents. The answers are tabulated in Annexes III-F and III-G. They can be analysed as follows:

(a) Subordinate Legislation published in the Canada Gazette.- Of 19 Government Departments replying, 15 stated that regulations of this type are always drafted in English. One Department stated that French was used sometimes. The Department of Public Works said that French and English texts of their regulations were prepared simultaneously. Two Departments did not answer this question. Of the seven intermediate Agencies replying, four stated that their regulations were prepared in English only. The Office of the Electoral Officer advised that regulations were prepared simultaneously in English and in French. Two did not reply. Twenty-four Boards and Commissions answered the questionnaire. Of these, 11 stated that their regulations were always drafted in English; 1 did not reply to this part of the question. The others did not answer the question at all or stated that it was not applicable.

(b) Subordinate Legislation exempted from publication in the Canada Gazette.- Only 9 out of 19 Departments replied specifically to this question: 5 stated that English was the

only language used and two indicated that French was used sometimes. Two out of seven intermediate Agencies replied, one stating that such regulations are always prepared in English and the second one stating the same thing but adding that a translator was present at certain points. The five Boards and Commissions replying to this part of the question all stated that English was the only language ever used.

We considered that it would be singularly informative to contrast administrative practices with respect to regulations which are covered by the Regulations Act but which are exempted from publication. We wanted to know what happened when an administrative entity is no longer bound by law to publish its important regulation in both English and in French. Here is what we found:

(I) Government departments.- Two types of departmental regulations are exempted: those under the National Defence Act[1] and Post Office Regulations. The Department of National Defence prepares and issues the majority of its regulations in this category in the English language. We quote the following comments from the Department's reply:

> " The majority of the rules, orders and instructions under this heading (namely , those exempted from publication in the Gazette) are issued in English but as much as possible when they are issued to the military personnel under the jurisdiction of the Army Headquarters at Quebec Command in Montreal they are also issued in French. Generally speaking, the rules, orders and instructions issue within Quebec Command which are of permanent nature are issued in French and in English but those of a temporary nature are issued in French only unless they concern a unit where the majority of the personnel are English-speaking."

---

1. 1952 R.S.C. c.184.

The criterion is thus the language of the unit concerned. In Quebec, rules of a permanent nature are issued in both languages and more temporary rules are issued only in French when the unit concerned is fundamentally French-speaking. But the majority of general regulations and particularly The Queen's Regulations and the Canadian Army Orders (which together run to some 8 volumes) are published in English only. These, it should be noted, are the general instructions used from day to day in our Army units. The opposite seems to be true in the Post Office. There the majority of important general regulations, such as the Manual of Financial Procedure, the Personnel Manual, the Headquarters Directives and the Canada Postal Guide are published in both languages.

(II) Intermediate agencies.- The Canadian Penitentiary Service and the R.C.M.P. are intermediate agencies whose regulations are also exempted from publication in the Canada Gazette. The Canadian Penitentiary Service stated that its regulations were always drafted in English. It referred to a total of 20 regulations of this type, 18 of which were issued in English only and 2 in both French and English. When regulations were also published in French, the French publication would come from between one to three months late. The Service introduced the following optimistic comment:

> "It is the policy of the Service that the Commissioners Directives (which are exempt from publication in the Gazette) shall be issued in both English and French. Due to a massive re-organization and overhaul of its Subordinate Legislation pursuant to the new Penitentiary Act, and to our initial inability to obtain the prompt translation services outside our Service, the considerable time delay has built

> up as between the French and English texts. Having set up our own translation facility at the Regional Office for the Quebec Region (at St. Vincent-de-Paul), we are now rapidly closing the gap. It is hoped that within the next year or so, there will be not more than a week or two of lag between the publication of directives in English and French. Simultaneous publication might eventually become practicable."

The Royal Canadian Mounted Police had different feelings and explained the fact that all its regulations are drafted and issued in English only as follows:

> "Regulations are published in English respecting the organization, training, discipline, efficiency, administration and good government of the Force and generally for carrying purposes and provisions of this Act into effect."

(III) Boards and Commissions.- Four boards and commissions which we studied are exempt from publication: The Air Transport Board, the Canada Wheat Board, the Canadian National Railways and the Board of Transport Commissioners for Canada.

(i) The Air Transport Board drafts all its regulations of this type in English, but publishes them in both languages.

(ii) The Canada Wheat Board drafts and issues its regulations in English only. It stated that these regulations were of the following types:

> "Orders allocating railway cars to delivery points. Instructions to the trade: (a)establishing general quotas for the delivery of grain to elevators by producers, (b) establishing quotas for specific delivery points, (c) regarding the issuance of permit books, (d) regarding the delivery of grain to Feed Mills, (e) various instructions to Shippers and Exporters regarding the manner of shipping grain, (f) establishing the terms of sale of Board grain to Shippers, (g) regarding the exchange of grain by producers for seed purposes, (h) regarding inter-provincial transportation of seed grain, (i) regarding export of seed grain. (These Instructions were issued to Shippers, Exporters and to the head offices of Grain Companies.)"

(iii) The Canadian National Railways makes exempt regulations pursuant to s. 293 of the Railway Act.[1] These regulations are always drafted in English, but are published in both languages as is required by s. 298 (4) of the Act, which requires notices, rules and regulations which are to be published in Quebec to be in both languages.

(iv) The Board of Transport Commissioners drafts all its orders and regulations in English. During the last one-year period, it issued 2,640 regulations or orders in English only, and 500 in both languages. None were only in French. The explanation given is the following:

> "Orders pertaining to matters or works in the Province of Quebec and Orders from any province when the application is made in French. Also General Orders affecting the public."

All other regulations are published in English only. The criterion seems to be territorial, namely whether the order is directed to Quebec but the Board will deal with persons and organizations who approach it in the language used in the request.

It would thus appear that whenever regulations are exempted from publication in the Canada Gazette, a French version will not be issued unless absolutely necessary according to the criteria used by the Agency involved. Two exeptions are the Post Office and the

1. 1952 R.S.C. c.234.

Air Transport Board. Some Agencies seem to confine the issue of French regulations to Quebec. This raises the question of the availability of bilingual texts in New Brunswick and in areas of Canada where there are substantial French speaking minorities.

(c) Subordinate Legislation not covered by the Regulations Act.- This question applied to the language used to draft rules, orders and instructions which are not included in the Regulations Act and which obviously do not need to be published in the Canada Gazette. All 14 Departments replying said that such legislation was always drafted in English. Three intermediate Agencies replied; one said that English was the only language used; another one commented that sometimes English was used with a translator present and sometimes French with a translator present; the third Agency stated that drafting in both languages was simultaneous. Sixteen Boards and Commissions of a total of 24 replied. Fifteen stated that drafting was done in English only. The C.B.C. alone advised that it drafted in English and in French simultaneously.

(d) Orders-in-Council.- Orders-in-Council are the oldest and most common form of Subordinate Legislation. An Order-in-Council is used by the Cabinet to authorize all forms of action which it is requested to take or to permit. The originals of Orders-in-Council, signed by the Governor-General, are kept in the Archives of the Privy Council Office. It would seem that virtually all the original copies are in the English language only. Many more private orders, such as the appointment of a judge, are issued in the language of the person concerned. If published, they would be published in one language only and in Part I of the Canada Gazette. It would also appear that most of the regulations approved by Order-in-Council either since or before 1947 have been approved in English only, although eventually published in both languages in the Canada Gazette. Yet, in most cases only the English text has been approved and signed and is kept in the Privy Council's Archives. However, both the Regulations Act[1] and the Canada Evidence Act[2] permit proof of an Order-in-Council by presentation of its texts as published in the Canada Gazette. This is indeed a roundabout way to render official the unofficial French translation.[3]

---

[1]Section 8;
[2]1952 R.S.C., c. 307, s.21;
[3]An interesting indication that the Privy Council is not breaking with tradition in keeping original copies in the English language only, was obtained from Dr. E. A. Forsey, in an interview on May 17, 1963, when he informed the research assistant responsible that while he was working through all the orders-in-council between 1867 and 1882 he found only one, the Order-in-Council of the 19th of May, 1881/1656 in the French language, prepared by Sir Hector Langevin. It was, however, signed in English, "Approved, (Lorne)". Dr. Forsey looked at more than 16000 orders.

(e) Reasons for the choice of language.- Question 4 asked for explanations of the drafting practices just outlined. The answers are tabulated in Annex III-G. (i) Of the reasons given by Government Departments for drafting their Subordinate Legislation in English, eight cited the language of the drafting officers as being an important factor, while eight singled out the correlative factor, namely a lack of qualified draftsmen in the other language. Seven Departments invoked past practice while 6 also singled out a desire for uniformity. Four departments further referred to the time involved in bilingual drafting. One department candidly added as a further justification that English was used since that was the language of the superior officers who would have to approve the regulations! (ii) Insofar as the intermediate agencies are concerned, five cited past practice; three, the language of drafting officers; two, the lack of qualified French draftsmen and two others a desire for uniformity as the most important reason for using English only. (iii) Twenty-four boards and commissions were queried. Eight invoked the language of the drafting officers; 5 listed their desire for uniformity of their regulations; 4 said that they lacked qualified French

draftsmen; two invoked a time factor; and one, established custom. The International Joint Commission and the St. Lawrence Seaway Authority listed as the principal reason for drafting in English only that most of their work was done in conjunction with the United States. By far, the most frequently cited reason for the departmental language practice was the language of the drafting officer, with past practice, the lack of qualified French draftsmen, and a desire for uniformity being cited in that order of frequency. It should be noted that many of the departments and agencies replying to this question listed more than one reason for the choice of English.

(f) A key factor: The language of the legal officers drafting subordinate legislation.-

An important factor in the choice of language for drafting subordinate legislation is the linguistic background of the draftsmen themselves.[1] This is not only self-evident, but is confirmed by the replies to question 4 of the questionnaire discussed in 3.24 (e). From preliminary investigations (later confirmed by the replies to the questionnaire), we were led to assume that regulations would normally be drafted by the legal officer in the administrative entity concerned. We also assumed that departmental legal officers would at least know English. We consequently designed question 9 of the questionnaire to uncover what percentage of legal officers were bilingual - in effect, what percentage knew French in addition to English - and the extent of their knowledge of either language. The replies are tabulated in annex III-H. They are summarized in the present sub-section. We queried, first of all, 22 government departments. Nineteen of these replied stating that they had a total of 180 legal officers. Of these, 45, or 25% were said to be bilingual. All bilingual officers had an excellent command of English, except two who were listed as only having a "good" command. But only 7 departments stated that they had at least one officer with excellent command of French; 2 said that they had officers with an average knowledge of the language; and another 3 that their bilingual officers' command of French was average to poor. It would thus appear that the bilingualism of these officers consisted essentially in a more or less satisfactory knowledge of French. Furthermore those officers who were said to

1. eg. the Unemployment Insurance Commission specifically stated that its subordinate legislation was drafted in English because the drafting legal adviser only new English.

command French had a much better reading ability than writing ability which certainly noes not borebode well of any attempt at draftsmanship in French. The situation seemed to be slightly better with respect to seven intermediate agencies queried. Three replied, having a total of 17 legal officers. Two of them had a total of 3 bilingual officers. This is 17%. These officers were said to have an excellent to good command of both English and French. Insofar as boards and commissions are concerned, 16 out of 24 replied, stating that they had a total of 80 permanent legal officers. Nine of them had at least one bilingual legal officer for a total of 21, or 26% of, legal officers. All bilingual officers had an excellent to good command of English. Four agencies replied that at least one of their officers had an excellent command of French and four others that at least one of their officers had a good knowledge of French. Another agency attributed an excellent to good command of French to its single bilingual officer.

3.25 Translation: Only after final English draft.-

Question 5 of the questionnaire was designed to determine who translates the three types of subordinate legislation and at what stage this translation takes place. A detailed breakdown of all the answers will be found in Annex III-I. These answers can be summarized as follows.

(i) Insofar as government departments are concerned, all three types of regulations are normally translated within the department, occasionally by the departmental officials, but most often by translators seconded from the Central Translation Bureau. These translators do all the routine translation within the department and have no special legal competence. As to the stage at which translation takes place, 16 of the 22 departments queried stated that regulations to be published in the Canada Gazette were translated into French only after the final draft had been prepared in English. The answers were scantier with respect to regulations exempted from publication in the Gazette. Four departments indicated that translation was done after the final draft; one stated that it occurred during that stage; and one said that translation took place either during or after the final draft. As for the third category of regulations not covered by the Regulations Act, 12 departments stated that translation took place after the final draft and 2 departments did not have any translation at all. Translation generally takes place within the Department by a translator

seconded from the Central Translation Bureau.

(ii) With respect to intermediate agencies, it would appear that translation is made either within the agency or by the Central Translation Bureau, although one agency listed the Department of Justice and another one, the Department of Finance, as doing the translation. The translators involved are not legal specialists, but the ones who do all the routine translation for the agency. In practically all cases translation is done from English after the final English draft has been completed.

(iii) The great majority of boards and commissions replying indicated that translation of regulations to be published in the Canada Gazette were translated within their own offices or those of other government departments, by translators seconded from the Central Translation Bureau. Only 3 out of 11 had their own translators. In all cases translation took place after the final draft. The replies about regulations exempt from publication were not very significant except that they also all indicated that translation took place after the final English draft. The replies were more numerous in connection with regulations which do not fall within the scope of the Regulations Act. Eleven boards out of 14 performed the translation within their own offices and only 3 entrusted it to the Central Translation Bureau or to other government departments. Seven used translators seconded from the Central Translation Bureau; six had their own translators to do this work; and one relied on the translators of government departments. In all fourteen cases, the trans-

lation took place after the final English draft.

The most significant findings are obviously that in all government entities, regulations of all types are practically always drafted in English and are translated only after a final English draft has been achieved and that relatively few government bodies employed their own translators.

3.26 Evaluation of the present system of drafting subordinate legislation.

The present method of preparing and publishing regulations dates back only to 1947. Before then, Departments werethe guardians of their own regulations which were drafted and translated entirely within the Departments. Normally, the Cabinet only saw and approved of the English texts and then the Department concerned was at liberty to decide whether or not there would be a French translation and whether this translation would be published. Usually, such translation would be published, although not necessarily simultaneously with the English original. Some doubt arises as to the legal validity of these translations which were approved by the Cabinet. This is not merely an academic question since there are a considerable number of regulations antedating 1947 which are still in force.

Although there has been considerable improvement since 1947, at least insofar as regulations are concerned which will be published in the Canada Gazette, the present system is far from perfect. The French text is prepared only after the whole cycle of drafting has been performed in the English language. It is a mere translation, often inexpertly performed by translators who have no particular competence in law. This is why it is necessary to have a special officer of the Privy Council to catch the more serious errors. However, even this minimum, applies only to regulations which are required to be published under the Regulations Act. We have seen that there are thirteen types which are exempted from publication and many of these are not issued in both languages. With respect to the large area of rules, orders and regulations, which are not included in the terms of the Regulations Act, the drafting, issue and publication is frequently done in English only and where both languages are used, the French version leaves even more to be desired.

3.27 Simultaneous drafting generally deemed impossible.-

We asked our respondents to indicate what problems they anticipated if they were to attempt to draft subordinate legislation simultaneously in French and in English. Their replies are tabulated in annex III-J . Seventeen government departments out of 22 replied to this question. Fourteen anticipated problems, and only 3 foresaw that none would occur. All 4 out of 7 intermediate agencies replying predicted problems. Of the 24 boards and commissions investigated, 17 apprehended problems and 4 did not anticipate any. In other words, out of 36 replying, 29 were convinced that simultaneous drafting would be difficult and create problems, and only 7 did not think that there would be any serious difficulties. The reasons given for this pessimistic view varied. For instance, the Department of Agriculture stated:

> "Even if the draftsman and the drafting officer were both completely bilingual, there is uncertainty that their thoughts would be expressed equally clearly in both languages. The situation would be worse if there were two different drafting teams, one English the other French. In that event I would expect that serious discrepancies between the French draft and the English draft would arise."

The Department of Defence Production felt that simultaneous drafting would create a problem of interpretation. The Department of External Affairs indicated that it felt that there would be an "unnecessary duplication of work by drafting legal officers when translation is available and satisfactory." [1]

---

1. This was also the opinion of The Farm Credit Corporation, of the Department of Public Works, the Air Transport Board, Canadian Wheat Board and several others.

Of course, as we have seen, translation is very seldom "satisfactory." But the Department of External Affairs saw no problem of interpretation arising out of simultaneous drafting. The Department of Finance stated:

> "Simultaneous drafting would, at present, require two separate draftsmen who would have to be instructed by different persons who would have to have a thorough knowledge of the subject matter in the language in which the instructions would be given."

The Department of Forestry saw it as a question of "competent personnel" which, indeed, it is, at least to some extent. The Department of Insurance listed "extra costs" which is a comment made by several Departments. The Department of Labour, with unwitting humor, answered:

> "Not having been exposed to such drafting, it is difficult if not impossible to answer."

The Department of National Health and Welfare stated:

> "Work would be restricted to one officer and benefits of joint efforts and deliberations, lost. Loss of substantial time in revising composite drafts. Much faster and efficient to work originally in one language."

The Department of National Defence was also opposed to simultaneous drafting on the following practical grounds:

> "Since most Orders, rules, and instructions are issued for military personnel, it would be very difficult to have simultaneous drafting in French and English. In the majority of the military units there is no necessity and it is doubtful that in most cases anything could be accomplished by doing this. It is also considered that if this was done, a vast increase in translation facilities for the Department at all levels would be required in Canada and outside of Canada. The increased requirement for translators would probably be in the thousands. Also since in a military organization

> speed is of the essence, it would not be practical to have Orders, rules and instructions issued in both languages at all times."

The comments from the Customs and Excise Division of the Department of National Revenue were that "it would be cumbersome, slow, expensive and unnecessary." The Taxation Division of the Department of National Revenue saw it as a personnel problem requiring the hiring of an officer for whom there would not be enough work at the present time. The Department of Northern Affairs and National Resources made the following slightly puzzling comments:

> "Drafting is a skill that requires, among other things, a sound knowledge of judicial interpretation. The common law is almost exclusively written and taught in English. It follows therefore that legislation based on the common law should be drafted in that language."

The officer added the following further comments:

> "I would add to my reply under 10(a) that legislation that forms part of the civil law of Canada should probably be drafted in French only, unless the draftsman had been taught law, or at least the specific subject in the law faculty, in both languages. To me the question under 10(a) is somewhat puzzling. I have little difficulty in drafting in English, but I would not attempt to prepare a draft -- in contradistinction to a translation -- in either of the two languages (Czech, German) which I have spoken since my childhood. Different considerations apply to the drafting of international treaties where the case law has been published and is accessible to students in many languages."

The legal services of the Department of Public Works saw a "duplication of effort and result may have different shades of meaning." But it then added somewhat contradictorily that it did not anticipate any problems of interpretation from bilingual publication! The Department of Veterans Affairs underlined

the double problem of needing bilingual draftsmen and bilingual senior officers to approve bilingual drafts.

Among the intermediate Agencies, the R.C.M.P. stressed the difficulty of recruiting qualified personnel, cost and time. The Comptroller of the Treasury envisaged the problem of delays resulting from the need to insure exact translation to avoid conflicts of interpretation. The Patents and Copyright Office saw a problem of delay, as did the Trade Marks Office.

We elicited the following comments from replies of the Boards and Commissions. For the Air Transport Board it would "constitute a wasteful and unnecessary duplication of effort." Atomic Energy of Canada Limited saw no problem that could not be solved by hiring additional personnel. The Canadian Wheat Board considered that it would be difficult for it to hire a qualified lawyer "fluent in French prepared to thoroughly familiarize himself with the operation of the Canadian Wheat Board, and maintain such familiarity probably for the sole purpose of such drafting." It also stressed duplication of work, costs and delay. The Board of Transport Commissioners for Canada made the following interesting comments:

> "Orders are drafted upon the recommendation of Branch Directors, Assistant Directors and heads of sections who are specialists in their respective very technical fields. Several technical English words and expressions are very little, if at all, known in current French parlance. However, General Orders affecting the public are issued in French and English. We know of no problem that simultaneous drafting would correct, however, in an organization such as a Court we cannot see much advantage."

The Board of Broadcast Governors stated:

> "The difficulty in drafting is the difficulty of communication between those who decide the principle of the legislation to be drafted and those who must draft it. An increase in the number of draftsmen would only compound the chances of error."

If we may allow ourselves a comment, one may wonder how this principle would have to be applied to Parliament.

The Export Credit Insurance Corporation stressed the problem of communication between English-speaking and French-speaking draftsmen:

> "The main problem would be the difficulty of communication of the French text to the remainder of the drafting team and to the fact that amending legislation passed over the years has been translated into French without reference to either the original Act or to previous amendments."

Indeed, it is hard to conceive of simultaneous drafting without both draftsmen having a fairly good knowledge of the other language.[1] The problem of divergence was also stressed by National Energy Board:

> " It is felt desirable to have only one draftsman responsible for the ultimate product of the drafting. Simultaneous drafting by two or more people may give rise to divergent points of view and interpretation which, in turn, could produce two different end results where, for obvious reasons, only one is desired. It is submitted that one draftsman should be employed using either French or English but not both at the same time."

The Farm Credit Corporation commented crisply:

> " We consider that simultaneous drafting in any strictly accurate sense would be pointless and impracticable."

---

1. In fact, the Unemployment Insurance Commission stated that it felt that for simultaneous drafting the services of a bilingual officer should be enlisted.

In other words the Departments, Boards and Commissions which opposed simultaneous **drafting** based their position on their anticipation of a number of practical difficulties: extra costs, the need and difficulty of finding competent personnel, problems of communications between draftsmen and senior officers(especially when the latter do not know French and could consequently not pass upon French drafts) , unnecessary delays , and resulting problems of interpretation . We are not in a position to properly evaluate these various arguments. But practical problems can be solved by practical solutions. This means that none of these objections need remain if the decision is made to give the agencies concerned the practical means to solve them. In our opinion, the only serious one among these objections is the lack of qualified legal draftsmen able to draft in both languages or to translate English drafts. This is a problem of training and recruitment. There may indeed be other valid reasons why some regulations which are directed to exclusively English areas need not be drafted in both languages. But unilingual drafting and publication is not limited to minor regulations directed at English-speaking geographical areas. In our opinion, if regulations are to be issued in both languages, the only way to avoid both delays between the appearance of both versions and superficial translations, is to have simultaneous drafting in two languages or at the very least cooperation between the English draftsman and the French translator from the very beginning of the drafting process.

3.28 Bilingual drafting raises fears of conflict of interpretation.-

In addition to practical problems which might be created by the call for simultaneous drafting, we wanted to know whether the administrative entities queried felt that publication of subordinate legislation in both languages would create special problems of interpretation. This was question 10 (b) of our questionnaire. The replies are tabulated in Annex III-K and are summarized herein. Out of 19 government departments replying, 9 stated that they could envisage or had actually encountered, problems of interpreting texts published in both languages. Ten departments did not anticipate any problems. The 4 intermediate agencies replying did not seem to fear any problem. Interestingly enough, when it came to boards and commissions, the 18 replying concluded in an even more pronounced proportion than government departments that no problem of interpretation would result from bilingual publication: 13 against 5. In other words, although most government officials expressed serious reservations about the feasibility of simultaneous drafting, they did not object to translation of an original draft and its publication in another language. On the following pages will be found some significant comments indicating the fear of the officials concerned.

The Department of Industry stated:

> "None known of. However, it is felt that if regulations are published in two languages, both texts being equally official, there could be problems of interpretation arising out of the intrinsic difficulty of expressing precisely the same meaning in two different languages."

The Department of Labour stated:

> "In dealing with labour conditions which spring from Fair Wages Policy Order, it was found that the translators failed to take advantage of an original Policy Order which had been translated into French for the purpose of publication in the Canada Gazette. The result was that the proposed labour conditions given by the translators some years ago did not conform to the original French translation as contained in the Canada Gazette."

This is an obvious illustration of the difficulties resulting from having legal documents translated by translators who are not lawyers. The Department of National Health and Welfare felt that differences might occur particularly where the translator was not particularly knowledgeable in the subject matter but added:

> " This could perhaps be overcome were both drafts -(both languages) prepared before publication of either, and in collaboration between translator and drafter."

In other words, the Department indicated that conflicts of interpretation could be avoided by simultaneous translation.This is

an interesting contradiction of the Department replied to the first part of this question in which it considered that simultaneous translation would not be practical. The Department of National Defence said:

> "This Department has insufficient experience in this field to have encountered too many problems but there is no doubt that interpretation would be a problem. If rules, etc., were all translated one text would have to be relied upon."

The Customs & Excise Division of the Department of National Revenue commented:

> "Difficulties have been encountered in ascertaining the true meaning of regulations in appeals to the Tariff Board."

Upon the undersigned's request for elaboration of this remark, Mr. G. Douglas McIntyre, Q.C., Solicitor for Customs, wrote as follows in a letter dated December 1, 1965:

> " ... I wish to advise you that in several appeals to the Tariff Board, difficulties of interpretation have been resolved by reference to the French texts.
>
> For example, in Appeal No. 764, concerning the 'Execulette' flushing toilet the respondent had classified the toilet under tariff item 289 as a closet. In the French version of the Customs Tariff, the word is water-closet. The Board accordingly found that the meaning of the word 'closet' included the toilet in issue.
>
> In Appeal No. 784 the Tariff Board considered whether pure reconstituted orange juice was exempt from sales tax under Schedule III of the

> Excise Tax Act which exempts 'fruit juices consisting of at least eighty-five per cent of the pure juice of the fruit'. By turning to the French text of the exemption the Board found that the phrase 'consisting of' referred clearly to the composition of the juice.
>
> Many other examples could be cited ..."

The Department of Veterans Affairs, although it opposed simultaneous drafting on practical ground, had not encountered any difficulty of interpretation of bilingual regulations. The Canadian Penitentiary Service stated:

> "Penitentiary Regulations, in one form or another, have existed since confederation. Penitentiary Regulations (1933) were published in both English and French and were distributed to each individual employee according to his linguistic need. No problems in interpretation of any consequence were ever encountered, so far as is now known."

The Comptroller of the Treasury has never issued regulations in English but anticipated "that if such documents were issued in two languages, it would be difficult to ensure that exactly the same shades of meaning were drawn in both languages". The Board of Broadcast Governors indicated that it had run into

problems resulting from literal translation of English draft into French by translators who obviously were not trained lawyers:

> "A number of our Regulations have not been so translated into French as to contain the same judicial meaning as the English draft. They have been literal rather than legal translations."

The Export Credits Insurance Corporation stressed the problems of terminology which would arise from translating regulations based on English commercial practice and which had no French equivalent:

> "There are always problems when technical terms are used. This is particularly so in the case of export credits insurance which was developed in England. The British expressions and forms have been copied by most other export credits insurers throughout the world. The French equivalent of these expressions vary greatly when used by the French, Belgian or Swiss organizations who when communicating with one another use their own version followed by the English term in brackets."

The National Energy Board drew attention to the basic problem of all translations:

> "A situation sometimes may occur where a difference in meaning arises when English regulations are translated into French and vice versa. It would seem that this may well be a continuing problem. The French language often appears to be a more precise language than English and therefore it seems difficult to ensure that certain subtle shades of meaning are accurately translated from French into English and, of course, from English into French. It may not be possible to achieve absolute similarity between the French and English versions of the same regulation."

III. PUBLICATION OF SUBORDINATE LEGISLATION

3.29 Publication of Subordinate Legislation: The Canada Gazette.-

In studying the process of drafting Federal Subordinate Legislation, we have come across various references to rules of publication. The Regulations Act requires[1] all regulations as defined by the Act to be published in French and in English in the Canada Gazette , within 30 days after they are made, except for thirteen categories exempted by section 9 of the Regulations adopted pursuant to the Regulations Act. In addition, we know that there are great numbers of orders and regulations which are not covered by the Regulations Act and which may or may not be published in the Canada Gazette. We have also had occasion to note the editing role of the assistant clerk of the Privy Council in preparing regulations for publication[2]. By publication we mean printing in the Canada Gazette[3]. We do not refer to various official or semi-official publications issued by Departments or Agencies in various forms, varying from office consolidations of pertinent statutes and regulations to booklets dealing with

---

1. 1952 R.S.C., c. 235, s. 6 (1).
2. cf. 3.23.
3. The Canada Gazette is published by the Queen's Printer under authority given by the Public Printing Act, 1952 R.S.C., c. 226, s. 27.

particular subjects[1]. The Canada Gazette is divided into two parts: Part I and II. Part I contains notices required by law from individuals and corporations and dealing with such things as divorces, bankruptcy, and sundry corporate matters and a variety of Government notices including proclamations, certain orders-in-council, civil service announcements and so on. Part I is bilingual in that the French and English texts are published in contiguous columns on the same page. This does not mean, however, that one column is a duplicate of the other. Many notices published in Part I are only in one language. Even some Government notices are in one language only. A number of Government Departments still

---

1. Such publication is sometimes regulated by a statute: e.g. The Railway Act, 1952 R.S.C., c. 234, s. 298 (4) requires all by-laws, rules and regulations to be published in both English and French; the Penitentiary Act, 1952, R.S.C., c. 206, s. 70 provides that the Commissioner shall draw up a list of prison offences, to be printed and placed in each cell (the language of such list is not stipulated, however).

publish notices in one language only. Normally such Government notices which will be published in both languages are sent to the office of the Canada Gazette in both versions. This is the case for all proclamations. But the Department of External Affairs sends notices of appointments, for instance, in English only and the Canada Gazette staff must translate them into French for publication.[1] But Part I is of secondary interest to us. Subordinate Legislation is normally published, when it is published, in Part II of the Gazette. Part II is published in two separate versions, one in English, and one in French. On the cover of Part II it is stated that it contains " All Rules, Ordinances, Decrees, Regulations or Proclamations Emanating from a Regulatory Authority in the Exercise of Legislative Power Conferred by Virtue or by Authority of a Law of Parliament". Insofar as the publication is concerned of regulations not covered by the Regulations Act, although, as we have noted, some of it may appear in the Canada Gazette, we do not have any detailed information. We found that it would be extremely difficult to obtain. Departments and Agencies tended to regard it as private information of interest only to themselves, although it is generally possible to write and obtain copies.

3.30 Language of Publication.-

Questions 6, 7 and 8 of our questionnaire were aimed at establishing administrative practices in the publication of subordinate legislation exempted from compulsory publication in the Canada Gazette or not

---

1. The information for the preceding paragraphs was derived mainly from an interview on June 10, 1965 with Mr. L.T. Michaud, the officer of the Queen's Printer responsible for the preparation and publication of Part I of the Canada Gazette.

covered by the Regulations Act. We wanted to find out in what language these types of regulations were published when published and whether there was a delay between the publication in one language and the publication in the other language. The replies and comments are tabulated in annexes III-L and III-M. We will summarize them.

(i) Insofar as government departments are concerned, 4 departments stated that some of their regulations exempted from compulsory publication in the Gazette were published in both English and French, but 4 of these departments stated that they published some regulations in English only, and 2 that sometimes publication was only in French. But as will appear from annex III-L the greatest number were published in English only or in both English and French, and very few in French only. Precise figures, however, could not be obtained. As for regulations not covered by the Regulations Act[1], 10 departments stated that they published their regulations in both languages; 8 also indicated that they published some regulations in English only; and only 2 declared that they had published regulations in French only. Again, as can be seen from annex III-M, most of these rules, orders and instructions are published only in English, although a substantial number are also published in both languages. Very few are published in French only.

(ii) Two intermediate agencies stated that they published regulations exempted from publication in the Gazette in both English and French, but 3 declared that they published such legislation only in English. Only the Canadian Penitentiary Service had ever published regulations in French only. Insofar as rules, orders and instructions are concerned which are not covered by the Regulations Act, one agency stated that publication took place in both languages, but 2 declared that they published such legislation in English only. Again, as will be seen from the comments in annexes III-L and III-M, the

---

1. cf. annex III-M.

great bulk of these regulations of intermediate agencies was published in English only.

(iii) The replies from boards and commissions were similar. Three of them stated that certain of their regulations normally exempted from publication in the Canada Gazette were nevertheless published in both languages; and 3 that they would be published only in English. None said that this type of legislation was ever published in French only. As for orders not covered by the Regulations Act 11 boards and commissions indicated that they would be published in English and French, but 10 stated that certain of these regulations were published in English only.[1] We were unable, however, to obtain satisfactory figures indicating the number of regulations of each type published in one language or the other. But on the whole it would appear, then, that when regulations are either exempted from compulsory publication in the Canada Gazette or are not covered by the Regulations Act the tendency of most administrative entities in the majority of cases when publication takes place is to do so in English only, although a substantial number of these regulations are published in both French and in English. Relatively few are published in French only. The criteria adopted are listed in annexes III-L and III-M. It would appear that the most important general regulations are published in both languages. Internal and staff regulations are normally in English only. French only is used for very local regulations. An English unilingual bias is obvious.

---

1. The St. Lawrence Seaway Authority was the only one publishing some of its orders in French only.

3.31 Delay between publication of French and English text.-

Our next question dealt with the delay between publication in one language and in the other language in cases where publication took place in both French and English. We distinguished between the two types of regulations (those covered by the Regulations Act but exempted from compulsory publication and those not covered by the Act). The replies are tabulated in annex III-N. With respect to the first category, 3 departments stated that publication when it took place in both languages was simultaneous; one commented that publication was generally simultaneous; and three stated that there was a delay of approximately two to three weeks between the two publications. Insofar as rules, orders and instructions are concerned, five departments claimed simultaneous publication; one said that publication was generally simultaneous; and five that there was a delay between the two publications. There were a few replies from intermediate agencies, one stating that it did not publish simultaneously regulations exempted from the Canada Gazette, and with respect to regulations not covered by the Act, one agency saying that publication was simultaneous and one that it was not. The replies from boards and commissions were not very satisfactory either. Two boards stated that they published such exempted legislation simultaneously, and one that it did not. Of the 12 boards replying with respect to regulations not covered by the Act 5 said that publication was not simultaneous, and 7 that it was. Thus, the only conclusion which can be drawn with some certainty from the replies to this part of the questionnaire is that not only are the majority of regulations which are exempted from compulsory publication in the

Canada Gazette or which are not covered by the Regulations Act published in English only, but in the comparatively rare cases where publication takes place in both languages, there is some delay between the publication of the English text and the French text. The matter would have to be studied further in order to obtain more precise information. Considerations of time prevented us from carrying out further inquiries.

B - THE DRAFTING AND PUBLICATION OF SUBORDINATE LEGISLATION IN QUEBEC.

3.32 Introduction.-

Because Quebec is the only jurisdiction outside the federal government which passes subordinate legislation in both lantuates, we assumed that it would be instructive for the purposes of comparison to study the practices of a number of provincial boards and commissions in drafting and publishing their regulations and orders. This was done by means of a questionnaire to which we received and computed replies from the following 12:

	NAME of Board or Commission	Abbreviation used
1.	Montreal Expropriation Bureau	Mtl. Expr. B.
2.	Workmen's Compensation Board	Work. Comp. Bd.
3.	Quebec Social Allowance Commission	Soc. All. C.
4.	Minimum Wage Commission	Min. Wage
5.	Quebec Hydro Electric Commission	Hydro
6.	Quebec Municipal Commission	Munic. Comm.
7.	Electricity and Gas Board	Elec. & Gas
8.	Water Board	Water Bd.
9.	Quebec Agricultural Marketing Board	Agric. Mark. Bd.
10.	Transportation Board	Transp. Bd.
11.	Highway Victims Indemnity Fund	Hi. Victims
12.	Public Service Board	Public S. Bd.

A copy of the relevant questions of the questionnaire is attached hereto as Annex III-O.

The 12 boards replying include some of the most important ones and represent a fair sampling of Quebec practices.[1] We did not include in our survey government departments, but do not believe that

1. Unfortunately 4 very important and very active boards did not reply: the Liquor Board, the Rental Board, the Labour Relations Board, and the Securities Commission.

the results would vary significantly if they had participated.

3.33 Types of subordinate legislation issued in Quebec.-

Since Quebec does not have the equivalent of the federal Regulations Act, we could not resort to the categories used to analyze federal regulations.[1] Consequently, on the basis of known Quebec practice, we divided regulations into the following three types:

a) Regulations issued directly by the board or commission concerned;

b) Regulations administered by the board or commission, but issued by the provincial cabinet;

c) Regulations issued by the board or commission, but requiring cabinet approval.[2]

3.34 Role of the Quebec Department of Justice.-

Practically all departments and commissions answering stated that the Quebec Department of Justice played no role whatsover in the drafting or revision of subordinate legislation administered by them. Quebec Hydro said that the Department of Natural Resources played a role in drafting its regulations. The Quebec Municipal Commission was the only one to declare that the drafts were prepared by a Department of Justice attorney seconded to the Department of Municipal Affairs.[3]

1. cf. 3.20.
2. Six boards had such regulations; 4 did not; 2 did not reply.
3. cf. 3.22 for attempt at increased control by the Federal Department of Justice over federal subordinate legislation.

3.35 Language used to draft subordinate legislation.-

Our inquiry into the language used to draft federal subordinate legislation disclosed that in practically all cases this was done in English.[1] We found a similar situation in Quebec although there the language was French.

a) Regulations issued by boards or commissions themselves.-

TABLE III-1

Abbreviations used: (a) = English only
(b) = French only
(c) = Simultaneously
(d) = English with the assistance of a translator
(e) = French with the assistance of a translator
(f) = no answer

Boards or commissions	(a)	(b)	(c)	(d)	(e)	(f)
Mtl. Expr. B.						x
Work. Comp. Bd.		always				
Soc. All. C.		always				
Min. Wage		always				
Hydro						x
Munic. Comm.		always				
Elec. & Gas		always				
Water Bd.						x

(cont'd.)

1. cf. 3.24.

Table III-1 (cont'd.)

Boards or commissions	(a)	(b)	(c)	(d)	(e)	(f)
Agric. Mark.Bd.		always				
Transp. Bd.						x
Hi. Victims						x
Public S. Bd.						x
TOTALS:		6				6

The 6 boards replying thus all stated that the original draft of their regulations was in French.

b) Regulations not published in the Quebec Official Gazette.-

TABLE III-2

Abbreviations used:
(a) = English only
(b) = French only
(c) = Simultaneously
(d) = English with the assistance of a translator
(e) = French with the assistance of a translator
(f) = no answer

Boards or commissions	(a)	(b)	(c)	(d)	(e)	(f)
Mtl. Expr. B.						x
Work. Comp. Bd.		always				
Soc. All C.		always				
Min. Wage		always				
Hydro	sometimes	sometimes				
Munic. Comm.		always				

(cont'd.)

Table III-2 (cont'd.)

Boards or commissions	(a)	(b)	(c)	(d)	(e)	(f)
Elec. & Gas			always			
Water Bd.			always			
Agric. Mark.Bd.		always	sometimes			
Transp. Bd.						x
Hi. Victims						x
Public S. Bd.						x

TOTALS:

Sometimes in English:	1
Sometimes in French :	1
Always in French :	5
Sometimes simultaneously :	1
Always simultaneously:	2
No answer:	4

Obviously some confusion must have occurred since the totals exceed the number of boards replying. But here too the majority stated that French was the language.

c) Other rules, orders and instructions.-

TABLE III-3

Abbreviations used: (a) = English only

(b) = French only

(c) = Simultaneously

(d) = English with the assistance of a translator

(e) = French with the assistance of a translator

(f) = no answer

Boards or commissions	(a)	(b)	(c)	(d)	(e)	(f)
Mtl. Expr. B.						x
Work. Comp. Bd.			always			
Soc. All. C.		always				
Min. Wage		always				
Hydro	sometimes		sometimes			
Munic. Comm.		always				
Elec. & Gas			always			
Water Bd.						x
Agric. Mark. Bd.			always			
Transp. Bd.			always			
Hi. Victims						x
Public S. Bd.						x

TOTALS:

Sometimes in English:	1
Always in French:	3
Sometimes Simultaneously:	1
Always Simultaneously:	4
No answer:	4

It would appear that these minor regulations were drafted quite frequently in both languages at the same time. In view of the replies to the previous questions we are led to wonder whether our respondents understood properly the meaning of "simultaneously" and did not confuse the drafting and the issuance of regulations.

d) Orders-in-council.- The working language of the draftsmen of subordinate legislation in Quebec seems to be French and most orders-in-council are drafted in French, except when they are suggested by English-speaking organizations or relate to financial matters.[1] All orders-in-council which are not published in the Quebec Official Gazette are drafted and approved by the Cabinet in French only. If an English translation is required by anyone, an "unofficial version" or an "office translation" is prepared by the Clerk of the Executive Council.[2] We have seen that this is very similar to the practice in Ottawa at one time, except for the fact that there the language was English.[3]

e) Reasons for the language practice.- None of the boards and commissions replied to question 13 requesting them to state the reasons for these language practices.

---

1. Interview with Mr. Jacques Prémont, Clerk of the Executive Council, supra.
2. Id.
3. cf. 3.24 (d).

f) Linguistic qualifications of the legal adviser.- We have seen[1] that an important factor in the choice of language for drafting subordinate legislation is the linguistic background of the legal officers charged with the drafting. Question 18 was constructed so as to determine the number of legal advisers employed by each board and commission and to establish whether or not they had a thorough knowledge of spoken or written French and English. Five boards had no full-time legal adviser. The remaining 7 employed a total of 24 lawyers, 22 of which were described as fluently bilingual in both spoken and written French and English. This is in marked contrast with the figure of 25% of all federal legal draftsmen being bilingual.

3.36 Translation of subordinate legislation.-

Having established that subordinate legislation in Quebec is generally drafted in French first, we inquired as to who translated the regulations into English and at what stage this took place. The replies are tabulated in the following table:

TABLE III-4

Abbreviations used: (a) = Translator employed by the board or commission

(b) = Translation by employees of Quebec Official Gazette

(c) = translated after final French draft

(d) = others

1. In 3.24 (g).

Table III-4 (cont'd.)

Boards or commissions	(a)	(b)	(c)	(d)
Mtl. Expr. B.	x		x	
Work. Comp. Bd.	x	x	x	
Soc. All. C.	x		x	
Min. Wage	x		x	
Hydro[1]	x		x	
Munic. Comm.		x	x	
Elec. & Gas	x		x	
Water Bd.	x		x	
Agric. Mark. Bd.[2]	x	(x sometimes)	x	
Transp. Bd.	x		x	
Hi. Victims				n/a
Public S. Bd.	x		x	
TOTAL:	10	3	11	1

Although most boards declared that their regulations were translated by internal translators, 3 referred to translations made by employees of the Quebec Official Gazette. It would appear that orders-in-council which are to be published in the Quebec Official Gazette are generally translated by the Queen's Printer's office and that the two versions are official[3]. In other words, it would seem that official status is

---

1. Quebec Hydro indicated that its rules and regulations were translated varyingly by employees of its secretarial staff, its legal department or its public relations department.
2. The Board indicated that some of its translation was done by outside services.
3. Interview conducted on August 26, 1965 with Mr. René Lachance, Chief Translation Clerk for the Quebec Official Gazette. The rules printed on the front page of the Quebec Official Gazette require that all notices be supplied in French and English. If they are only in one language, then a translation is made by the Queen's Printer at the cost of the interested party (the official rate is $1.00 per hundred words).

given to a translation prepared by government employees, but never submitted to, or approved by, the Cabinet! The translators working for the Queen's Printer ensure, among other things, that every document (notices, proclamations, orders-in-council, regulations, rules, appointments, etc.) is translated. Translations from French to English represent abour 80% of the work of that office, and the remaining 20% are from English to French.[1] Most texts are submitted in their original language and translated by an employee under the supervision of the Chief Translation Clerk. Once published, as we will see,[2] both versions are authentic. The Translation Office of the Quebec Official Gazette encounters the usual technical problems and frequently has to make inquiries with specialists to find the right translation.[3] When it seems particularly difficult to find the exact French equivalent of an English expression, the English term will be given in brackets (e.g. "compagnie de portefeuille (holding company)"). The office experiences some difficulty with technical translations into English. It makes the usual complaint about the unavailability of trained translators. Furthermore, translators must switch from one area of activity to another and cannot specialize. As with the Central Translation Bureau in Ottawa the tendency in case of doubt is to stick to a literal translation.

---

1. Id.
2. In 3.39.
3. Lachance interview, id..

3.37 Attitudes to simultaneous drafting.-

We saw that federal officials were almost overwhelmingly arrayed against simultaneous drafting in both languages.[1] Of the 12 Quebec boards and commissions queried, 5 declared that they did not anticipate any problem; 3 did not express any opinion. As for the others, they saw a variety of problems ranging from "problèmes de traduction", a time factor, less ease in working on two texts at the same time.

3.38 Attitudes to problems of interpretation.[2]-

We queried the boards on whether they anticipated any particular difficulties of interpretation resulting from the existence of subordinate legislation in two versions. Seven stated that they saw no problems. One board thought that they would arise only if the two versions were not first co-ordinated. Another one opined that the rare problems which might arise could be solved by the normal rules of interpretation of statutes. A third board felt that some of its decisions might be difficult to translate for technical reasons.

3.39 Publication of subordinate legislation.-

Quebec does not have any equivalent of the federal Regulations Act. The Provincial Secretary's Department Act[3]

---

1. cf. 3.27.
2. cf. 3.28 for attitude of federal administrative bodies.
3. 1964 R.S.Q. c. 54, ss. 20 et seq..

provides for the appointment of a Queen's Printer who shall publish the Quebec Official Gazette. Section 28 of this statute states that all publications in the Quebec Official Gazette shall be authentic. Article 1207 of the Quebec Civil Code declares to be authentic and to make proof of their contents without any evidence of their official character being necessary, all orders-in-council issued by the Provincial Government, all official documents printed by the Queen's Printer, and all official announcements appearing in the Quebec Official Gazette by authority. These laconic provisions obviously do not indicate which regulations must be published and which need not be published. To discover which regulations require publication in the Quebec Official Gazette we must turn to the particular statute governing the administrative entity issuing the subordinate legislation. These provisions are scattered all over the Revised Statutes and the more recent bills. Some regulations need to be published in their entirety in the Quebec Official Gazette,[1] while for others it is sufficient that a notice of their approval by the Cabinet be published.[2] Occasionally the statute also stipulates that the publication is to take place in two languages.[3] But frequently, there is no provision, although

---

1. Water Board Act, 1964 R.S.Q., c. 183, s. 16; Moving Pictures Act, 1964 R.S.Q., c. 55, s. 6; Collective Agreements and Decrees Act, 1964, R.S.Q., c. 143, s. 5; Colonization Land Sales Act, 1964 R.S.Q., c.102, s.4.
2. Superior Council of Education Act, 1964, R.S.Q., c. 234, s. 28.
3. Water Board Act, supra; Collective Agreements and Decrees Act, supra.

the practice is for all publications of regulations in the Quebec Official Gazette to be bilingual.

It should be noted that several other provinces have general statutes requiring publication of their regulations.[1] Other provinces have general laws dealing with their Queen's Printer and with publication of proclamations, regulations, and notices.[2]

---

1. Ontario: The Official Notices Publication Act, 1960 R.S.O., c. 266; The Regulations Act, 1960 R.S.O., c. 349; Prince Edward Island: The Interpretation Act, 1951 R.S.P.E.I., c. 1, s. 7 (3); Saskatchewan: The Regulations Act, 1963 S.S., c. 79, s. 4.

2. New Brunswick: Queen's Printer Act, 1952 R.S.N.B., c. 189, ss. 9, 11 and 13; Newfoundland: The Public Printing and Stationery Act, 1952 R.S.Nfld., c. 27, ss. 10 (1) and 12 (1); Yukon: Public Printing Ordinance, 1958 R.O.Y.T., c. 93, s. 2.

In reply to the question whether their regulations were published in the Quebec Official Gazette, only 3 boards replied in the affirmative; 5 said that they were not; and the remaining 4 stated that the question was not applicable to them. This question was supplemented with queries about the reasons for publishing certain regulations and withholding some others. While the answers to these questions were fragmentary and do not provide significant statistics, we noted the following comments:

The Quebec Social Allowance Board commented:

> "Les textes de loi ainsi que les règlements qui doivent paraître dans la Gazette officielle de Québec sont publiés dans les deux langues; les autres publications qui sont pour la plupart des règlements de régie interne sont rédigées en français seulement."

and added:

> "les règles de régie interne qui ne sont pas publiés (sic) dans la Gazette officielle de Québec sont rédigées en français seulement."

The Minimum Wage Commission stated:

> "Toutes nos ordonnances et règlements intéressant le public sont publiés dans les deux langues dans la Gazette Officielle.
>
> Les annonces, les Avis et directives intéressant les employeurs et salariés sont publiés dans les journaux anglais et français, dans la langue utilisée par le journal."

The Commission added that all its ordinances and rules are issued in both languages.

The Electricity and Gas Board stated that it published in both languages:

> "Les ordonnances générales de règlementation des entreprises publiques.

> Les ordonnances établissant les tarifs des entreprises publiques."

It publishes in French only:

> "Les ordonnances de nature particulière concernant ou affectant une entreprise publique désignés sous un vocable français, une corporation municipale de la province ou toute autre institution, même bilingue, opérant dans la province."

The Quebec Agricultural Marketing Board stated that its rules of practice and procedure were published in both languages, as were the general instructions concerning agreements homologated by the Board.

The Public Service Board stated that it published in both languages its rules of practice as well as its general ordinances and then added to the general remarks:

> "La Régie suit essentiellement une politique bilingue en ce sens que toutes les lois qu'elle a charge d'appliquer sont bilingues et que les règlements qui émanent d'elle le sont également. Dans tous ses rapports avec les personnes qui entrent en contact avec elle, la Régie utilise la langue de son interlocuteur."

We were not any more successful in trying to elicit significant data as to the delay between the publication of the English and French versions of regulations not published in the Quebec Official Gazette. The 5 boards and commissions replying stated that when such publication took place both versions were published simultaneously.[1]

---

1. For the situation with federal subordinate legislation cf. 3.29.

3.40 Language of issue of Quebec subordinate legislation.-

Irrespective of publication in the Quebec Official Gazette, it would appear that the general tendency of boards and commissions and of the Cabinet in issuing regulations is to do so in both languages. The replies to our queries in this connection are tabulated in the following sub-paragraphs:

a) Regulations issued by Quebec boards and commissions:

TABLE III-5

Abbreviations used:

Fr. = French only

E. = English only

Fr. & E. = French and English

x = applicable

n/a = not applicable

Boards or commissions	Fr.	E.	Fr. & E.	Nil
Mtl. Expr. B.	n/a	n/a	n/a	n/a
Work. Comp. Bd.	x	n/a	x	n/a
Soc. All. C.	x	n/a	n/a	n/a
Min. Wage	x	n/a	x	n/a
Hydro	x	x	x	n/a
Munic. Comm.	n/a	n/a	x	n/a
Elec. & Gas	n/a	n/a	x	n/a
Water Bd.	n/a	n/a	x	n/a
Agric. Mark. Bd.	n/a	n/a	x	n/a
Transp. Bd.	n/a	n/a	x	n/a
Hi. Victims	n/a	n/a	n/a	n/a
Public S. Bd.	n/a	n/a	x	n/a
TOTAL:	4	1	9	0

It would thus appear that the great majority of Quebec Boards and Commissions issue their regulations in both languages, although 4 stated that some of their regulations were in French only, and Quebec Hydro indicated that some of its regulations were sometimes in English only. It should be noted that some of these answers overlap and that a board or commission may issue not only bilingual regulations, but also some regulations which are in only one or the other language.

b) Regulations issued by the Provincial Cabinet:[1]

TABLE III-6

Abbreviations used:

Fr. = French only
E. = English only
Fr. & E. = French and English
x = applicable
n/a = not applicable

Boards or commissions	Fr.	E.	Fr. & E.	Nil
Mtl. Expr. B.	n/a	n/a	n/a	n/a
Work. Comp. Bd.	n/a	n/a	n/a	n/a
Soc. All. C.	x	n/a	n/a	n/a
Min. Wage	x	n/a	x	n/a
Hydro	n/a	n/a	n/a	n/a
Munic. Comm.	n/a	n/a	x	n/a
Elec. & Gas	n/a	n/a	n/a	n/a
Water Bd.	n/a	n/a	x	n/a
Agric. Mark. Bd.	n/a	n/a	x	n/a

(cont'd.)

1. cf. 3.35 (d) for provincial orders-in-council.-

Table III-6 (cont'd.)

Boards or Commissions	Fr.	E.	Fr. & E.	Nil
Transp. Bd.	x	n/a	n/a	n/a
Hi. Victims	n/a	n/a	n/a	n/a
Public S. Bd.	n/a	n/a	x	n/a
TOTAL:	3	0	5	0

It would appear that 7 out of the 12 boards and commissions administer such regulations. Five stated that the regulations they administer are drafted in both languages. Two administer some regulations which exist only in French. Another one, in addition to bilingual regulations, also administers regulations which only exist in French. None have regulations which exist only in English.

DIVISION IV

PROBLEMS OF INTERPRETATION OF BILINGUAL STATUTES AND SUBORDINATE LEGISLATION

3.41 Introduction.-

It would appear from section 133 of the B.N.A. Act that under normal circumstances the two versions of a federal or Quebec bilingual statute are of equal authority. Hence, in order to ascertain the law on any subject regulated by a bilingual statute, particularly in the event of ambiguity or conflict, both the French and English versions may have to be consulted. This is why we stressed in the preceding section the importance of simultaneous and joint publication of the two versions. It may happen, however, that the two versions will read somewhat differently; that is to say, that they will say in effect two different things, which may vary only in degree, or which may contradict each other outright. Occasionally one version may contain a vague or ambiguous term or expression, while the other version is clear and unambiguous. Or a situation may be encountered in which an English dictionary gives more than one meaning to a particular English word and a French dictionary gives more than one meaning to the word used to translate a corresponding English term. Nevertheless, both these versions purport to state one and the same law, and one and the same legislative policy. The question then arises, just what meaning

is to be given to a law which exists in two official but conflicting versions. That this is no mere academic question of semantics but a great practical problem, will be evidenced by the illustrations taken from the jurisprudence and reviewed in 3.45 . The result of this examination of the court cases is to add emphasis to the need for careful and simultaneous draftsmanship in both languages.

3.42 History of statutory rules of interpretation in Quebec.-

The difficulties posed by linguistic differences in bilingual statutes were appreciated from the very beginning of legislation in both languages in Lower Canada. In 1793, two years after the Constitutional Act had divided what was then Canada into Upper and Lower Canada, the House of Assembly of Lower Canada adopted the following rules of interpretation:[1]

> "III. That Bills relative to the criminal laws of England in force in this province, and to the

---

1. Doughty, Arthur George, and McArthur, Duncan A., Constitutional Documents, op. cit., Vol. III, p. 105. Italics ours.

> rights of the Protestant clergy, as specified in the act of the 31st year of his Majesty chap. 31, shall be introduced in the English language; and the Bills relative to the Laws, customs, usages and civil rights or this Province, shall be introduced in the French language, in order to preserve the unity of the texts.
>
> IV. That such Bills as are presented shall be put into both languages, that those in English be put into French, and those presented in French be put into English by the clerk of the House or his Assistants, according to the directions they may receive , before they be read the first time - and when so put shall also be read each time in both languages - well understood that each Member has a right to bring in the Bill in his own language, but that after the same shall be translated, the text shall be considered to be that of the language of the law to which said Bill hath reference.

In 1859, when the statutes of what was then Canada were consolidated, the following rule of interpretation applied:

> "14. If upon any point there be a difference between the English and the French versions of the said Statutes, that version which is most consistent with the Acts consolidated in the said Statutes shall prevail." [1]

The rule was repeated verbatim in the Act respecting the Consolidated Statutes for Lower Canada of 1861.[2] Article 2615 of the Quebec Civil Code, which dates from about the same time, provided the following rule of interpretation in the event of textual conflicts:

---

1. An Act respecting the Consolidated Statutes of Canada, (1859) 22 Vict., c.29, s.14.
2. C.S.L.C. 1861, c.1, s.14.

> " If in any article of this Code founded on the laws existing at the time of its promulgation, there be a difference between the English and French texts, that version shall prevail which is most consistent with the provisions of the existing laws on which the article is founded; and if there be any such difference in an article changing the existing laws, that version shall prevail which is most consistent with the intention of the article, and the ordinary rules of legal interpretation shall apply in determining such intention.

One reason for this rule is that the Code is largely a compilation of the laws in force at the time of its promulgation. The Commissioners named to codify the laws described the nature of their work in the following terms:

> "By the act which orders the formation of the code, the Commissioners are required to insert therein the civil laws of a general and permanent character actually in force; to exclude from it those which are no longer so, and only to propose in the form of amendments, apart and distinctly, the changes they may think desirable; and they are directed to give the reasons and cite the authorities which have guided them in their decisions o n each subject." [1]

The Commissioners listed after each article the sources they consulted in order to ascertain what was the law upon the point covered by the article.[2] It is these sources which may be resorted to in order to interpret provisions of the Code where differences

---

1. Second Report of the Commissioners appointed to codify the Laws of Lower Canada in civil matters, Quebec, 1865, Geo. Desbarats, ed., p. 139.
2. The original texts of these sources are reproduced in their entirety in Bibliothèque du Code Civil, ed. by C.C. De Lorimier, Montreal, 1871, 21 vols.

exist between the two versions.

It should be noted that certain parts of the Code were drafted first in French and then translated into English while the remaining portions were drafted first in English and later translated into French. More specifically, the Books on Persons and Property[1] were first drafted in French, while the Book on Commercial Law[2] was drafted in English. In the Book on Acquisition of Right of Ownership,[3] the drafting was done in English except for the titles of Successions, Gifts, Marriage Covenants, Suretyship, Privileges, Hypothecs, Registration and Prescription.[4]

The Commissioners themselves did not draft what is now Art. 2615. It first appears in the Act respecting the Civil Code of Lower Canada[5]. In the Schedule of the Act, resolution 217 contains what are now Arts. 2613, 2614and 2615 of te Code. This Schedule sets out modifications proposed by the Legislature on the drafts submitted by the Commissioners. The last article of their Supplementary Report corresponds to what is now Art. 2613.[6]

1. Books I and II.
2. Book IV.
3. Book III.
4. Thomas McCord, The Civil Code of Lower Canada, Montreal, 1867, preface, p. viii.
5. 29 Vict., S.C., 1865, c. 41.
6. "The laws in force at the time of the coming into force of this code are abrogated in all cases: In which there is a provision herein having expressly or imliedly that effect; In which such laws are contrary to or inconsistent with any provision herein contained; In which express provision is herein made upon the particular matter to which such laws relate; Except always that as regards transactions, matters and things anterior to the coming into force of this code, and to which its provisions could not apply without having a retroactive effect, the provisions of law which without this code would apply to such transactions, matters and things remain in force and apply to them, and this code applies to them only so fas as it coincides with such provisions."

In 1937 an attempt was made to have the French version prevail in cases of differences between the French and English texts of laws which contained provisions similar to Art. 2615.[1] However, because "l'application de la loi 1 George VI, chapitre 13, peut provoquer des froissements et des problèmes de solution difficile, qu'il convient d'éviter",[2] the statute was repealed a year later.

The rule of Art. 2615 C.C. was re-enacted practically verbatim in Art. 2 of the Quebec Code of Civil Procedure. Quebec statutes were revised in 1964. The rule for interpretation of the Revised Statutes in case of discrepancy between the English and French versions is that the text which is most consistent with the consolidated laws shall prevail.[3]

The Medical Act[4] and the Optometrists and Opticians Act[5] both state that if there is any difference or diversions between the French and English versions of the statute, the French version shall prevail.

3.43 Federal statutes: no statutory rules of interpretation.-

At the federal level, there is no rule of interpretation analogous to Art. 2615 C.C., not even in the Interpretation Act.[6] However, the courts have adopted what in effect amounts to a similar rule that both versions are to be consulted and the

---

1. Loi relative à l'interprétation des lois de la province, 1 Geo. VI, S.Q., 1937, c. 13.
2. 2 Geo. VI, S.Q., 1938, c. 22, preamble.
3. An Act respecting the Revised Statutes, 1964, 13-14 Eliz. II, c. 9, s. 8, found in 1964 R.S.Q., p. v. This provision repeats verbatim the following provision of acts dealing with the Revised Statutes of Quebec: 1941, 5 Geo. VI, S.Q., c. 15, s. 7 (2) and 1959-60, 8-9 Eliz. II, S.Q., c. 27, s. 7.
4. 1964 R.S.Q., c. 249, s. 1.
5. 1964 R.S.Q., c. 257, s. 51.
6. 1952 R.S.C., c. 158.

intention of the legislator be determined.[1]

3.44 Judicial practices in interpretation of bilingual statutes.-

Although, as we have noted, both the English and French version of bilingual statutes are apparently entitled to equal authority, in fact, only the Quebec courts and the Supreme Court of Canada seem to consult both versions. An informal survey we conducted by questionnaires early in 1965, leads us to believe that the large majority of judges in provinces other than Quebec almost never consult the French version of federal statutes. The few who do are all French-speaking. In Quebec, on the other hand, the jurisprudence discloses that both versions are consulted quite frequently. The same is true for the Supreme Court which has had occasion, as we will see, to interpret ambiguous provisions of federal statutes by reference to both versions, and it has done the same thing in deciding Quebec cases. In the following section the jurisprudential solutions of textual conflicts in bilingual statutes will be reviewed in some detail. We do not claim that our survey of the jurisprudence is exhaustive. The totally inadequate indexing of cases in Canada has hampered our research in this as in many other areas. However, we believe that we have found the leading cases and that they provide a fairly accurate reflexion of the attitute of the courts.

---

1. R. v. Dubois [1935] S.C.R. 378; Composers, Authors and Publishers Association v. Western Fair Assn. [1952] 2 D.L.R. 229; Food Machinery Corp. v. Registrar of Trademarks [1946] 2 D.L.R. 258; Champagne v. Rivard (1955) 34 C.B.R. 173; Stevenson v. Canadian Northern Railway Co. [1948] 1 D.L.R. 247; Commissioner of Patents v. Winthrop Chemical Co. Inc. [1948] 2 D.L.R. 561; Moore v. The Queen [1903] S.C.R. 522.

3.45 Jurisprudential solutions for textual conflicts in bilingual statutes.-

In the following cases Canadian courts had to consider conflicts between French and English versions of either federal or Quebec statutes.

(a) "public work" vs. "chantier public" in The King vs. Dubois[1].- The Supreme Court, on a petition of right claiming damages for the death of a passenger in a government automobile, had to decide whether this automobile was a "public work" in the sense of s. 19 (c) of the Exchequer Court Act[2]. The French version used the words "chantier public". The Exchequer Court had decided that the automobile was a "public work". On appeal, the Supreme Court reversed this judgment after considering the meaning of the word "chantier" used in the French version. It decided, rightly from a linguistic point of view, that "chantier" denoted a defined area and locality and could not include a public service such as a government vehicle. In a similar case, R. v Moscovitz[3] decided shortly thereafter, the Supreme Court followed its own precedent in the Dubois case.

(b) "by reason of a motor vehicle" vs. "quand un véhicule automobile cause".- In the case of Blouin v. Dumoulin[4] the trial court awarded damages to the father of a child injured after being struck by defendant's vehicle. Since there was evidence of contact between the automobile and the victim, the trial judge applied the presumption of liability found in what was then s. 53 (2) of the

---

1. [1935] S.C.R. 378.
2. 1927 R.S.C., c. 34.
3. [1935] S.C.R. 404.
4. [1958] B.R. 581.

Motor Vehicles Act[1] whose English version read as follows:

> "Whenever loss or damage is sustained by any person by reason of a motor vehicle[2] on a public highway, the burden of proof that such loss or damage did not arise through the negligence or improper conduct of the owner or driver of such motor vehicle shall be upon such owner or driver."

Defendant appealed and raised, among other arguments, that the French version of this sub-section began with the words: "Quand un véhicule automobile cause[3] une perte ou un dommage ...", claiming that the presumption could only apply if proof was made that the collision had been caused by the automobile. This argument was rejected by the Court of Appeal, and more particularly by Mr. Justice Montgomery thereof. The learned judge compared both versions, remarking:[4]

> "The two versions of the Act must be read together ... the word cause in the French version must be interpreted in the light of the English version."

The appeal was rejected.

(c) "personal injury" vs. "injure personnelle".- In the case of Robitaille v. Beaupré[5], a married woman claimed damages resulting from an automobile accident without being authorized by her husband to institute the action. Article 1298a of the Civil Code permitted married women to sue without authorization in order to recover damages for "personal injury". Defendant argued that the action was null and void in view of the absence of authorization because "personal injury" had to be interpreted as being confined to attacks upon the honour and

---

1. R.S.Q. 1941, c. 142.
2. italics ours.
3. italics ours.
4. [1958] B.R. 581, at p. 583.
5. (1937) 75 C.S. 502.

reputation of the woman and did not refer to bodily injuries. Defendant relied upon the French version of art. 1298a C.C. in which the words "personal injury" had been mistranslated by "injure personnelle" which would normally mean insults. This was indeed a case of poor translation. The court set out to determine which of the two versions of the article would have to apply by referring not only to art. 2615[1], but also to art. 12 of the Civil Code which reads:

> "When a law is doubtful or ambiguous, it is to be interpreted so as to fulfil the intention of the legislature, and to attain the object for which it was passed."

The court consulted the report of the Commission which had suggested the enactment of the article[2]. Since this report directly bore out defendant's contention and since the report had been submitted in French by French-speaking commissioners, the trial judge decided in favor of defendant and adopted a more restricted meaning of the French version.

(d) "personal wrongs" vs. "torts personnels".- The interpretation of the words "personal wrongs" in art. 421 of the Quebec Code of Procedure has also had to be considered by the courts.

---

1. "If in any article of this Code founded on the laws existing at the time of its promulgation, there be a difference between the English and French texts, that version shall prevail which is most consistent with the provisions of the existing laws on which the article is founded; and if there be any such difference in an article changing the existing laws, that version shall prevail which is most consistent with the intention of the article, and the ordinary rules of legal interpretation shall apply in determining such intention."
2. Outside Quebec this practice is forbidden, as the intention of the legislature is to be found within the very words of a statute without reference to outside sources, and especially without reference to reports such as this one and similar material. However, in Quebec, the Act which provided for codification of the civil law required the commissioners to submit a report on their work, and this report was to be, and still is, considered as an official document. It is not uncommon in Quebec cases to see the courts refer to these reports in interpreting (cont'd.next page)

This article gives the right to a trial by jury "in all actions for the recovery of damages resulting from personal wrongs". In French, the words "torts personnels" are used to translate the words "personal wrongs". The Supreme Court was called to interpret these words.[1] Mr. Justice Brodeur noted[2] that "torts personnels", the meaning of which in correct French eluded him, originated in a literal translation from an English statute of 1785 in which the words "personal wrongs" first appeared. Furthermore, trial by jury in civil cases was an institution derived from English law. Hence, to find the proper interpretation of the French words "torts personnels" he turned to the English authorities to determine the meaning of the English counterpart, and decided the point at issue on that basis. The learned Justice pointed out that the meaning of the words "personal wrongs" had been considered previously by several tribunals, but that they had never had to consider both versions.

(e) "at its pleasure" vs. "à sa discrétion".- In Davis v. The City of Montreal[3], David, who had been employed by the City of Montreal as superintendent of water-works for three years, and had been dismissed by resolution of the City Council, sued in damages for wrongful dismissal. He was successful in the Superior Court. On appeal, ultimately to the Supreme Court, the latter compared the English text of the City Statute[4] which empowered it

---

footnote 2. continued from previous page:
ambiguous provisions in the Code, since they are permitted to do so by law. So ruled the Court at p. 508.

---

1. Montreal Tramways Co. v. Séguin (1915-16) 52 S.C.R. 644.
2. Id., at p. 656.
3. (1896-97) 27 S.C.R. 539. -- 4. see next page.

to employ persons to work for it and added that the City Council "may ... at its pleasure remove any such officer and appoint another in his place." Davis argued unsuccessfully that the French version of the words "at its pleasure", namely "à sa discrétion" meant something different. The court ruled that both versions indicated the clear intention of the legislator to give wide arbitrary powers to the City Council.

(f) "land damages" vs. "préjudice à ces terres".- In Stevenson v. Canadian Northern Railway Co.[1], the railway company, acting under authority given to it under the Railway Act[2], erected a snow fence on the property of Stevenson. As a result a large snowbank accumulated which melted in the spring. The water retained by the soil after melting prevented Stevenson from seeding his land at the proper time and thereby reduced the yield of his crops. Stevenson sued claiming "land damages" under the Railway Act. After failing in the lower court, he succeeded before the Manitoba Court of Appeal. Two of the three judges of the majority decided in favour of Stevenson after consulting the French version of the relevant section of the Railway Act. Indeed, while the English version allowed the railway to erect snow fences on property belonging to others and adjacent to the railway line "subject to the payment of ... land damages", the French version was "sauf paiement d'une indemnité dans le cas de préjudice à ces terres". Mr. Justice Richards commented[3]:

---

footnote 4. from previous page:

4. 52 Vict. c. 79, s. 79.

1. [1948] 1 D.L.R. 247 (Manitoba Court of Appeal).
2. R.S.C. 1927 c. 170, s. 203.
3. [1948] 1 D.L.R. 247 at p. 255.

> "I understand it (the French version) to mean that the railway company will compensate the owner or other person entitled to the use of the lands for any loss caused by interference with his use of it."

This he took to include damages occasioned by loss of crops because of inability to sow at the proper time, which had been the case here. Damage to the soil itself was not the only element to be considered in evaluating damages to be compensated.

(g) "business or calling" vs. "exercer aucun négoce ou métier".- In the King v. Charron[1], the accused was charged with violating the Quebec Sunday Observance Act[2] because he had shown a motion picture on a Sunday against payment of an admission fee. The Act forbade the pursuit of any business or calling on Sunday. The corresponding French words read "exercer aucun négoce ou métier". The accused was acquitted because the court followed the rule that when a penal statute is interpreted, the interpretation must be that most favorable to the accused. In this case, the French version of the statute, being narrower in scope than the English version, the accused was entitled to benefit from the French version. The court held indeed that "exercer un négoce" meant to trade in goods and chattels and that "exercer ... un métier" meant earning a livelihood by manual labor. The showing of motion pictures could not be characterized as either "un négoce" or "un métier".

---

1. (1910) 15 C.C.C. 241.
2. 1908, 7 Ed. VII, S.Q., c. 42, s. 2.

(h) "conditions of employment" vs. "conditions de travail".- In Price Bros. & Co. Ltd. v Letarte et al.[1] the Quebec Court of Appeal was faced with the problem of interpreting the Quebec Labor Relations Act[2] in which the words "conditions of employment" were rendered in French by the phrase "conditions de travail" whenever they appeared. A union and a company for which its members worked were unable to agree on a request by the union for voluntary revocable check-off of union dues from the wages of the employees which the company refused. When negotiations for a collective agreement failed, the Minister of Labor appointed a conciliator. When it appeared that the conciliator had been unsuccessful also, a council of arbitration was appointed pursuant to the Quebec Trade Disputes Act.[3] The company then contested the jurisdiction of the council on the ground that the check-off clause in dispute was not a "condition of employment" or "condition de travail" which was the only kind of matter the council could consider. The court decided that the statute as a whole should be looked at to determine the meaning of the phrase. It examined the purpose of the Act, namely facilitating the negotiation of agreements between employers and employees, and proposed to interpret the Act so as to give full effect to that intention. The court held that the unduly narrow interpretation given by the Company would include only actual physical conditions under which the work was done and "conditions of employment" would be restricted to rates

---

1. [1953] B.R. 307.
2. R.S.Q. 1941 c. 162A.
3. R.S.Q. 1941 c. 167.

of pay and hours of work stipulated at the time the workman was employed. This, the court further held, was not in conformity with the intention of the legislator.

(i) "Superior Judge" vs. "Juge de la Cour Supérieure".- The 1857 Controverted Election Act gave jurisdiction to a "Superior Judge". The French version spoke of a "Juge de la Cour Supérieure". The matter was raised in two cases before the Superior Court[1] and a suggestion was made that there was a contradiction between the two versions. The court disagreed and referred to the intent and meaning of the law.

---

1. O'Farrell v. de Tilly, (1858) 2 L.C.J. 26 and Bellingham v. Abbott, (1858) 2 L.C.J. 13.

3.46 Jurisprudential rule when earlier laws are replaced.-

When a text of law is based upon or consolidates, earlier laws, the court will consult them when the new text itself is not clear.[1] This the courts are enjoined to do by the first part of Art. 2615 C.C.:

> "If in any article of this Code founded on the laws existing at the time of its promulgation, there be a difference between the English and French texts, that version shall prevail which is most consistent with the provisions of the existing laws on which the article is founded ..."

Article 2615 C.C. applies only to the Civil Code. However, other Quebec statutes contain similar rules[2], and these are relied upon by the courts as authority to consult sources of the statute.[3] Occasionally the courts apply the rule implicitly, without mentioning it, but referring apparently to the source of the law being interpreted.[4] When an article changes the existing law, article 2615 C.C. directs the courts to apply that version of the article which is most consistent with its intention. In order to ascertain this intention, the "ordinary rules of legal interpretation shall apply". It has been left to the courts to formulate these "ordinary rules" for the interpretation of the Code. These

---

1. Robitaille v. Beaupré (1937) 75 S.C. 502; Rémillard v. Couture [1955] S.C. 162; Naud v. Marcotte (1900) 19 Q.B. 431.
2. Municipal Code, (1916) Art. 15; Act respecting the revision of statutes, 5 Geo. VI S.Q. 1941, c. 15, s. 7.
3. City of Montreal v. A & P Food Stores Ltd., (1949) 79 Q.B., 789.
4. Exchange Bank of Canada v. The Queen, (1886) 11 A.C. 157 (Privy Council); Fournier v. Atty-Gen. (1910) 19 Q.B. 431, followed by Pratte, J. in L'Imprimerie Populaire Ltée v. Leclerc [1960] Q.B. 922; Montreal Street Railway Co. v. Feigleman, (1912) 7 D.L.R. 6; Trans-Island Motors Ltd. v. Benk [1961] C.S. 138; Roy v. Davidson (1898) 15 S.C. 83.

rules have then been extended by the courts to the interpretation of other bilingual statutes. In penal statutes, we have seen that the rule is that when two interpretations are possible, that which is most favorable to the accused shall prevail.[1] Where one version of a statute is inaccurate, doubtful or ambiguous, and the other version of the section is clear, the clear version is applied.[2] Where the two versions clearly contradict each other, they nullify each other[3].

3.47 Interpretation of Subordinate Legislation.-

Administrative Law and Subordinate Legislation are fraught with interpretive problems.[4] But basically the rules of interpretation for subordinate legislation are the same as those for statutes. Two cases will illustrate this assertion. In Cameron v. Filion et al[5], the Ontario High Court, ruling that an Act is to be interpreted so as to achieve its object and so as to give effect to all its provisions, considered irrelevant a minor difference between the definition of the French word "bail" and the English "lease" in an Order of the Wartime Prices and Trade Board. The Court pointed out that the slightly more narrow definition of the French term

---

1. The King v. Charron (1910) 15 C.C.C. 241; Bernier v. The Quebec & Levis Ferry Co. Ltd. (1911) 39 S.C. 193; Roy v. Davidson (1898) 15 S.C. 83.
2. Corporation of Coaticook v. People's Telephone Co. (1901) 19 S.C. 535; Bellingham v. Abbott (1858) 2 L.C.J. 13; O'Farrell v. De Tilly, loc. cit., p. 26 (the two previous cases are in a special section at rear of volume); Blouin v. Dumoulin [1958] Q.B. 581.
3. Lacerte v. Verreault (1899) 16 S.C. 230; O'Farrell v. de Tilly, supra, Bellingham v. Abbott, supra.
4. cf. McAllister, G.A., "Administrative Law", (1963) 6 Can.Bar J. 439, especially at 442, et seq..
5. [1947] O.W.N. 155.

was intended to apply only in Quebec because of Quebec law. In Filion v.Grenier[1], an action for wages taken by a janitor of a rooming house was dismissed because the Ordinance of the Minimum Wage Commission he involved was held to apply only to "apartment houses" and not to every business which might fall within the wider French version of this term "maison de rapport". The Court held that although a rooming house might fall under the definition of a "maison de rapport" it was not an "apartment house".

Sometimes special provisions dealing with rules of interpretation are to be found in the subordinate legislation itself. For instance, s. 1 of the by-laws of the Corporation of Psychologists of the Province of Quebec[2] defines "Official Languages" as follows:

> All By-Laws and the Code of Ethics of the Corporation shall be in both French and English as official and equivalent texts. All other official transactions of the Corporation (including Minutes of all General and Special Meetings, Minutes of all Council Meetings, and reports of Committees to the Council) shall be official in the French language, but an unofficial translation in English shall be provided for members of the Corporation.

---

1. [1954] Q.B., 158.
2. Incorporated pursuant to the statute of 1962 10-11 Eliz. II, c. 88.

> All motions at Council Meetings, General and Special Meetings of the Corporation shall be presented in equivalent forms in both languages.

On the other hand by-law 90 of the Province of Quebec Association of Architects[1] stipulates that in the event of conflict between the French and English versions of the by-laws, the French one is to prevail.[2]

---

1. Incorporated by the Architects Act, 1964, R.S.Q., c. 261.
2. For a discussion of the problems of interpretation of conflicting versions of municipal by-laws, cf. 8.04 (d).

A N N E X III - A

Academic Training for Interpreters and Translators in Canada.

McGill University

The course at McGill [1] is an extension course given in conjunction with the Translators' Society of Quebec Inc. and involves only translation of written material, not the interpreting of the spoken word. McGill's course is a three-year evening course, consisting of twenty classes per year. A qualifying examination must be written for admission into the course, which leads to a Diploma or a Certificate of Proficiency.

The Translators' Society itself draws its members both from the course at McGill and from persons not enrolled in the McGill course but interested in translation either as a career or for cultural purposes. It carries on various activities, dinners,lectures, social events, and study sessions where translation problems submitted by members are discussed and resolved. The study sessions are designed to help students with their work and provide other members with the opportunity of obtaining a higher standard in the

---

1. The description of this course is taken from a prospectus issued by the Translators' Society of Quebec Inc.

translation field. The Society offers its members examinations in Italian, Spanish and German. While the Society does not undertake to provide work for translators, it does fill requests for translators from persons needing their services.

Université de Montréal.

The two-year course in translation at the Université de Montréal[2] leads to the degree of Maîtrise dès Arts en Traduction. Admission requirements are the degree of Bachelor of Arts from the Université de Montréal or its equivalent and the passing of an oral or written qualifying examination in English and French. In addition to courses in both these languages, the candidates for the Maîtrise must take courses in a third modern language - German, Spanish, Italian, Polish or Russian. They must also do practical work with a commercial translation enterprise or in a governmental translation service under the direction of the Linguistics Department, and submit a 100-page thesis on translation under the direction of a professor. As well, they must attend conferences held by the department. The first year consists of courses in English fiction and composition, English themes, oral and written expression, advances literary translation, comparative style,

---

2. The description of this course is taken from the Annuaire de la Faculté des Lettres, Université de Montréal, 1965-66, pp. 44-45

simultaneous interpretation, and a translation seminar. The second year includes courses in advances literary translation, comparative style, English linguistics, "version technique", "thème technique", sight translation, translation seminars, either simultaneous interpretation or précis writing and oral expression, and "explication des textes." In both years candidates are required to take additional courses from a choice of international law, constitutional and administrative law, economics, human geography, economic geography, the history of the Atlantic civilization, and Canadian history from 1760 to the present. Enrollment is limited to twenty students.

Since 1940 the Université de Montréal's Extension Department also has been offering four-year evening courses in its Translation Institute[1]. Requirements for admission are completion of twelfth year or an arts-science course or their equivalents, passing of examinations in both English and French, and fluency in both languages. The course leads to a diploma of competence in bilingual translation. The courses during the first three years include translation between the two languages in commercial letters and texts relating to industry, finance, advertising, journalism, and

---

1. Prospectus of l'Institut de Traduction, Cours du soir, 1965-66, l'Université de Montréal, Extension de l'Enseignement.

the like. The fourth year consists of practical work and a thesis. In 1948 the Translation Institute became the Canadian centre of La Societé pour la Propagation des Langues Etrangères en France.

A N N E X III - B

LIST OF DEPARTMENTS AND AGENCIES QUERIED AND OF ABBREVIATIONS USED.

Abbreviations used:		Departments:
1.	Ag	Agriculture
2.	D.P.	Defence Production
3.	Ext.	External Affairs
4.	Fin.	Finance
5.	Fish.	Fisheries
6.	For.	Forestry
7.	Ind.	Industry
8.	Ins.	Insurance
9.	L.	Labour
10.	N.D.	National Defence
11.	N.H. & W.	National Health and Welfare
12.	N.R. C. & E.	National Revenue, Customs and Excise
13.	N.R. T.	National Revenue, Taxation
14.	N.A.	Northern Affairs
15.	P.W.	Public Works
16.	P.O.	Post Office
17.	T. & C.	Trade and Commerce
18.	T.	Transport
19.	V.A.	Veterans Affairs

		Intermediate Agencies
1.	C.P.S.	Canadian Penitentiaries Service
2.	C.E.O.	Chief Electoral Officer
3.	C.S.C.	Civil Service Commission
4.	C.T.	Comptroller of the Treasury
5.	S.S.P.C.	Secretariat of State, Patents and Copyright Office
6.	S.S.T.M.	Secretariat of State, Trade Marks Office
7.	R.C.M.P.	Royal Canadian Mounted Police

Abbreviations used:		Boards and Commissions:
1.	A.D.B.	Atlantic Development Board
2.	A.E.C.	Atomic Energy Commission
3.	A.T.B.	Air Transport Board
4.	B.B.G.	Board of Broadcast Governors
5.	B.G.C.	Board of Grain Commissioners
6.	B.T.C.	Board of Transport Commissioners
7.	C.A.	Canadian Arsenals Ltd.
8.	C.B.C.	Canadian Broadcasting Corporation
9.	C.M.H.C.	Central Mortgage and Housing Corp.
10.	C.N.R.	Canadian National Railways
11.	C.P.C.	Canadian Pensions Commission
12.	C.W.B.	Canadian Wheat Board
13.	D.C.B.	Dominion Coal Board
14.	Exp. C.	Export Credits Insurance Corp.
15.	F.C.C.	Farm Credit Corp.
16.	F.R.B.	Fisheries Research Board
17.	I.J.C.	International Joint Commission
18.	N.C.C.	National Capital Commission
19.	N.D.R.B.	National Defence Research Board
20.	N.E.B.	National Energy Board
21.	St.L.S.A.	St. Lawrence Seaway Authority
22.	T.A.B.	Tax Appeal Board
23.	T.B.	Tariff Board
24.	U.I.C.	Unemployment Insurance Commission

A N N E X III - C

QUESTIONNAIRE RESPECTING THE DRAFTING AND PUBLICATION OF SUBORDINATE LEGISLATION

NAME_____
(Department or Agency)

1. With reference to the different types of subordinate legislation which come under the Administration of your Department

   a) Does your department issue regulations, as defined by the Regulations Act R.S.C. 1952 c. 235, which are approved by the Governor General in Council on the recommendation of your Minister?

      _____Yes

      _____No

      IF YES: About how many including amendments have been issued during the past twelve months?

      _____

   b) Does your Department issue regulations, as defined by the Regulations Act R.S.C. 1952 c. 235, which are made on the direct authority of your Minister?

      _____Yes

      _____No

      IF YES: About how many including amendments have

been issued during the past twelve months?

_____

c) Does your Department issue regulations which are exempted from publication in the Canada Gazette by the Regulations Under Section 9 of the Act SOR-54-569

_____Yes

_____No

IF YES: About how many including amendments have been issued during the past twelve months?

_____

d) Does your Department issue other rules, orders or instructions, not included within the terms of the Regulations Act--which affect only your own Department?

_____Yes

_____No

IF YES: About how many including amendments have been issued during the past twelve months?

_____

e) Does your Department issue other rules, orders, instructions, not included within the terms of the Regulations Act--which affect the public?

_____Yes

_____No

IF YES: About how many including amendments have been issued during the past twelve months?

_____

2. What role does the Justice Department play in the drafting of the various types of subordinate legislation which are made by your department?

a) Regulations published in the Gazette (check one)

_____Does all the drafting

_____Involved in the revision only

_____Not involved in either the drafting or revision

_____Not applicable: regulations of this type not issued by our Department

b) Regulations exempted from publication in the Gazette (check one)

_____Does all the drafting

_____Involved in the revision only

_____Not involved in either the drafting or revision

_____Not applicable: regulations of this type not issued by our Department

c) Other rules, orders or instructions not included within the terms of the Regulations Act (check one)

_____Does all the drafting

_____Involved in the revision only

_____Not involved in either the drafting or revision

_____Not applicable: rules, orders or instructions of this type not issued by our Department

3. (This question is concerned with the drafting of subordinate legislation in your Department).

A. In what language are those regulations published in the Gazette drafted?

	Always	Sometimes	Never
In English	( )	( )	( )
In French	( )	( )	( )
Concurrently	( )	( )	( )
In English with a translator present	( )	( )	( )
In French with a translator present	( )	( )	( )
Not applicable ( )			

B. In what language are those regulations not published in the Gazette drafted:

	Always	Sometimes	Never
In English	( )	( )	( )
In French	( )	( )	( )
Concurrently	( )	( )	( )
In English with a translator present	( )	( )	( )
In French with a translator present	( )	( )	( )
Not applicable ( )			

C. In what language are those rules, orders, instructions not included within the terms of the Regulations Act drafted:

	Always	Sometimes	Never
In English	( )	( )	( )
In French	( )	( )	( )
Concurrently	( )	( )	( )
In English with a translator present	( )	( )	( )
In French with a translator present	( )	( )	( )
Not applicable ( )			

4. If you have indicated in reply to question 3 that French is not used in the process of drafting, to which of the following reasons do you attribute the practice of your Department?

	Yes	No
Time involved	( )	( )
Past practice	( )	( )
Lack of qualified French draftsmen	( )	( )
Language of drafting officers	( )	( )
Desire for uniformity	( )	( )
Costs involved	( )	( )
Others (please specify)		

5. (This question pertains to the translation of the different types of subordinate legislation).

A. Regulations published in the Gazette: (check which apply)

(i) Where are they translated?

- In your Department ( )
- At the central Translation Bureau ( )

- Elsewhere (please specify) ( )

(ii) By whom are they translated?

- An official of your Department ( )
- A member of the Translation Bureau in your Department ( )
- Others (please specify) ( )

(iii) At what stage in the drafting process is the translation done?

- During the first draft ( )
- After the first draft ( )
- During the final draft ( )
- After the final draft ( )

B. Those regulations exempted from publication in the Gazette: (check which apply)

(i) Where are they translated?

- In your Department ( )
- At the central Translation Bureau ( )
- Elsewhere (please specify) ( )

(ii) By whom are they translated?

- An official of your Department ( )
- A member of the Translation Bureau in your Department ( )
- Others (please specify) ( )

(iii) At what stage in the drafting process is the translation done?

- During the first draft ( )

- After the first draft ( )
- During the final draft ( )
- After the final draft ( )

C. Other rules, orders, instructions, not included within the terms of the Regulations Act: (check which apply)

(i) Where are they translated?

- In your Department ( )
- At the central Translation Bureau ( )
- Elsewhere (please specify) ( )

(ii) By whom are they translated?

- An official of your Department ( )
- A member of the Translation Bureau in your Department ( )
- Others (please specify) ( )

(iii) At what stage in the drafting process is the translation done?

- During the first draft ( )
- After the first draft ( )
- During the final draft ( )
- After the final draft ( )

6. Please state how many of the regulations which are exempted from publication in the Gazette are issued in both languages, in English only, in French only. (See Annex 1)

- In English and French Estimated number June 64-June 65

- In English only — Estimated number June 64-June 65

_____

- In French only — Estimated number June 64-June 65

_____

7. Please state how many of these rules, orders, instructions, not included within the terms of the Regulations Act are issued in both languages, or in English only or French only. (See Annex 2)

- In English and French — Estimated number June 64-June 65

_____

- In English only — Estimated number June 64-June 65

_____

- In French only — Estimated number June 64-June 65

_____

8. In general, where both English and French texts are published, is the publication(a) of the texts of regulations not published in the Gazette and(b) of those orders, rules, instructions, not included within the terms of the Regulations Act simultaneous or is there a delay in the publication of one text?

(i) Regulations not published in the Gazette:

Simultaneous ( )

Not simultaneous ( )

If not simultaneous please estimate the average delay:

(ii) Rules, orders, instructions, not included in the terms of the Regulations Act:

Simultaneous ( )

Not simultaneous ( )

If not simultaneous please estimate the average delay:

9. (a) How many legal officers are there in your Department?

_____

(b) How many of the legal officers in your Department are bilingual? _____

(c) If bilingual, please estimate the degree of facility with which the legal officer(s) read(s) and write(s) both languages.

	Excellent	Good	Fair	Poor
Reading ability in English	( )	( )	( )	( )
Writing ability in English	( )	( )	( )	( )
Reading ability in French	( )	( )	( )	( )
Writing ability in French	( )	( )	( )	( )

10. (a) What problems, in your view, would simultaneous drafting in English and in French create?

(b) Do you feel that texts of regulations published in

two languages present special problems of interpretation after they are published?

_____Yes

_____No

Please list any such problems that have been encountered with the regulations of your Department.

ANNEX 1 (For question 6)

Please list in very general terms the different types of regulations made by your Department which are published in both languages, those which are published in English only and those which are published in French only.

In both languages:

In English only:

In French only:

ANNEX 2 (For question 7)

Please list in very general terms the different types of regulations made by your Department which are published in both languages, those which are published in English only and those which are published in French only.

In both languages:

In English only:

In French only:

A N N E X III - D

QUESTION 1: Types of subordinate legislation issued.

Abbreviations used:
(a) = regulations requiring Cabinet approval
(b) = regulations under direct authority of Minister
(c) = regulations exempted from publication in the Canada Gazette
(d) = rules, orders or instructions not falling within the Regulations Act and affecting only internal operations of the Department
(e) = rules, orders or instructions not falling within the Regulations Act and affecting the public
n/a = not applicable
x = no answer or not applicable.

Department	(a)	(b)	(c)	(d)	(e)
Ag	yes-60	yes-3	x	x	yes-5
D.P.	x	x	x	yes-84	x
Ext.	yes-2	x	x	x	x
Fin.	yes-40	x[1]	yes	yes-25-30	x
Fish.	yes-57	yes-26	x	x	yes-425
For.	yes-1	yes	x	x	x
Ind.	yes	x	x	yes-10	x[2]
Ins.	yes	x	x	x	yes
L.	yes-3	x	x	x	x
N.D.	yes-260	yes-50	thousands[3]	x	x
N.H.&W.	yes-25	x	x	yes-4	yes-4
N.R.-C.&E.	yes-12	yes-207	x	yes-670	yes-65
N.R.-T	yes-7	x	x	x	yes-10
N.A.	yes-25	yes-2	x	Regs. of N.W.T.	x
P.W.	yes-12	yes-394	x	x	x
P.O.	x	yes-10	yes-670	yes-350	yes-1280

(cont'd.)

footnote next page.

Question 1 (cont'd.)

Department	(a)	(b)	(c)	(d)	(e)
T. & C.	yes-6	x	x	x	yes-3
T.	yes-50	yes-25	yes-2	yes-1400	yes-600
V.A.	yes-12	yes-10[4]	x	yes-200	x
TOTALS-Depts.:	17	10	4	9	9

1. The Department of Finance stated: "The questions to this questionnaire do not cover other rules, orders or instructions not included within the terms of the Regulations Act which affect the Public Service as a whole. The Treasury Board issues many of these, such as

   (a) Treasury Board circular letters, approximately 60 of which were issued in 1964, 1/3 of these were issued in both languages; and

   (b) management improvement circulars, approximately 60 were issued in 1964."

2. The Department of Industry stated: "The reason for the small number in the answer to question 1 (e) is that most of such rules, orders and instructions are directed to employees of both Departments (i.e. - Defende Production and Industry) and are issued through the Department of Defence Production."

3. The Department of National Defence stated: "It is very difficult to estimate how many regulations have been issued by this Department under this heading as such regulations are issued daily to all personnel within the Department. These Orders, rules and regulations are issued at Headquarter level as well as command and unit levels."

4. The Department of Veterans Affairs stated: "Under the Veterans' Land Act, The Director, with the approval of the Minister, may make regulations authorizing the persons named therein to act on behalf of The Director. These regulations are published in English only."

Question 1 (cont'd.)

Intermediate Agency	(a)	(b)	(c)	(d)	(e)
C.P.S.	1	x	20	88	x
C.E.O.	yes	x	x	1	x
C.S.C.	20	x	x	x	x
C.T.	x	x	x	265	x
S.S.P.C.	yes	x	x	x	x
S.S.T.M.	yes	x	x	x	x
R.C.M.P.	x	x	4	158	x
TOTAL (agencies)	5	0	2	4	0

Question 1 (cont'd.)

Board or Commission	(a)	(b)	(c)	(d)	(e)
A.D.B.	x	x	x	x	x
A.E.C.	x	x	x	yes	no answer
A.T.B.	2	x	8	x	350
B.B.G.	x	4	x	x	15
B.G.C.	x	x	x	yes	yes
B.T.C.	x	x	3140	x	x
C.A.	x	x	x	x	x
C.B.C.	x	x	x	3	x
C.H.M.C.	60	x	x	2	x
C.N.R.	yes	x	yes	yes	x
C.P.C.	x	x	x	25	5
C.W.B.	16	x	1411	x	x
D.C.B.	3	x	x	x	x
Exp. C.	x	x	x	15	x
F.C.C.	2	x	x	2	x
F.R.B.	x	x	x	x	x
I.J.C.	x	x	x	x	5
N.C.C.	1	x	1	yes	yes
N.D.R.B.	x	x	x	65	x
N.E.B.	yes	x	x	506	yes
St.L.S.A.	yes	x	x	10	12
T.A.B.	x	x	x	x	yes
T.B.	x	x	x	x	x
U.I.C.	yes	yes	x	274	x
TOTAL (Boards or Commissions)	10	2	5	13	9

A N N E X III - E

QUESTION 2: Role of the Department of Justice.

Abbreviations used: (a) = regulations published in the Canada Gazette

(b) = regulations exempted from publication in the Canada Gazette

(c) = others not included within the terms of the Regulations Act

All = All drafting

"R" = revision only

n/i = not involved

Department	(a)	(b)	(c)
Ag.	R	x	n/i
D.P.	x	x	n/i
Ext.	R	x	R
Fin.	All	All	Important regs. only(R)
Fish.	R	x	n/i
For.	R	x	x
Ind.	R	x	n/i
Ins.	R	x	n/i
L.	R	x	x
N.D.	R	n/i	x
N.H. & W.	R(sometimes)	R(sometimes)	n/i
N.R. C. & E.	R.	x	n/i
N.R.- T.	R.	x	n/i
N.A.	R.	x	n/i
P.W.	R.	n/i	x
P.O.	R.	n/i	n/i
T. & C.	R.	x	R
T.	R.	R	R
V.A.	R	x	n/i

(cont'd.)

Question 2 (cont'd.)

TOTALS: (Departments)	(a)	(b)	(c)
All the drafting	1	1	0
Revision only	17	2	4
not involved	0	3	11
not applicable	1	13	4

Question 2 (cont'd.)

Intermediate Agencies	(a)	(b)	(c)
C.P.S.	R	n/i	n/i
C.E.O.	R	x	n/i
C.S.C.	All	x	x
C.T.	x	x	n/i
S.S.P.C.	R	x	x
S.S.T.M.	R	x	x
R.C.M.P.	x	n/i	n/i

TOTALS (Agencies)	(a)	(b)	(c)
All the drafting	1	0	0
Revision only	4	0	0
not involved	0	2	4
not applicable	2	5	3

Question 2 (cont'd.)

Board or Commission	(a)	(b)	(c)
A.E.C.	no answer	x	x
A.T.B.	n/i	n/i	n/i
B.B.G	R	x	n/i
B.G.C.	R	x	n/i
B.T.C.	x	n/i	x
C.B.C.	x	x	n/i
C.M.H.C.	n/i	x	n/i
C.N.R.	x	n/i	n/i
C.P.C.	x	x	n/i
C.W.B.	R	n/i	x
D.C.B.	All	x	x
Exp. C.	x	x	n/i
F.C.C.	Drafting & R	x	n/i
I.J.C.	x	x	n/i
N.C.C.	no answer		
N.D.R.B.	x	x	n/i
N.E.B.	R	x	n/i
St.L.S.A.	R	x	n/i
T.A.B.	x	x	no answer
U.I.C.	R	x	n/i

TOTALS: (Boards or Commissions)	(a)	(b)	(c)
All the drafting	1	0	0
Drafting and Revision	1	0	0
Revision only	6	0	0
not involved	2	4	14
not applicable	8	15	4

A N N E X III - F

QUESTION 3: Language used in the drafting of regulations.

Abbreviations used:

(a) = regulations published in the Canada Gazette

(b) = regulations not published in the Canada Gazette

(c) = rules, orders, instructions not included within the terms of the Regulations Act

E = English

F = French

S = Simultanenously

Department	(a)	(b)	(c)
Ag.	Always E	x	Always E
D.P.	x	x	Always E
Ext.	x	Always E	Always E
Fin.	Always E	Always E	Always E
Fish.	Always E	x	Always E
For.	Sometimes E Sometimes F	x	x
Ind.	Always E	x	Always E
Ins.	Always E	x	Always E
L.	Always E	x	x
N.D.	Always E	see comments[1]	x
N.H. & W.	Always E	Always E	Always E
N.R. C & E	Always E	x	Always E
N.R. - T.	Always E	x	Always E
N.A.	Always E	x	x (Regs. of N.W.T)
P.W.	S	Sometimes E Sometimes F	x
P.O.	Always E	Always E	Always E

(cont'd.)

footnote next page.

Question 3 (cont'd.)

Department	(a)	(b)	(c)
T.&C.	Always E	x	Always E
T.	Always E	Always E	Always E
V.A.	Always E	x	Always E

TOTALS: (Departments)	(a)	(b)	(c)
Always in English	15	5	14
Not applicable	2	12	5
Sometimes in English	1	2	0
Sometimes in French	1	2	0
Simultaneously	1	0	0

1. The Department of National Defence commented: "The majority of the rules, orders and instructions under this heading are issued in English but as much as possible when they are issued to the military personnel under the jurisdiction of the Army Headquarters at Quebec Command in Montreal they are also issued in French. Generally speaking, the rules, orders and instructions issued within Quebec Command which are of permanent nature are issued in French and in English but those of a temporary nature are issued in French only unless they concern a unit where the majority of the personnel are English speaking."

Question 3 (cont'd.)

Abbreviations used:

t.p. = translation provided

Intermediate Agencies	(a)	(b)	(c)
C.P.S.	Always E	Always E sometimes E(t.p.)	sometimes E sometimes F sometimes E(t.p.) sometimes F(t.p.)
C.E.O.	S	x	S
C.S.C.	no answer	x	x
C.T.	Always E	x	x
S.S.P.C.	Always E	x	x
S.S.T.M.	Always E	x	x
R.C.M.P.	x	Always E	Always E

TOTALS (Agencies)	(a)	(b)	(c)
Always in English	4	2	1
Not applicable/no answer	2	5	4
Sometimes in English) Sometimes in French)	0	0	1
Sometimes in English (t.p.)	0	1	1
Sometimes in French (t.p.)	0	0	1
Simultaneously	1	0	1

Question 3 (cont'd.)

Board or Commission	(a)	(b)	(c)
A.E.C.	no answer	no answer	no answer
A.T.B.	Always E	Always E	Always E
B.B.C.	Always E	x	Always E
B.G.C.	Always E	x	Always E
B.T.C.	x	Always E	x
C.B.C.	x	x	S
C.M.H.C.	Always E	x	Always E
C.N.R.	x	Always E	Always E
C.P.C.	x	x	Always E
C.W.B.	Always E	Always E	x
D.C.B.	Always E	x	x
Exp. C.	x	x	Always E
F.C.C.	Always E	x	Always E
I.J.C.	x	x	Always E
N.C.C.	Always E	Always E	Always E
N.D.R.B.	x	x	Always E
N.E.B.	Always E	x	Always E
St. L.S.A.	Always E	x	Always E
T.A.B.	x	x	Always E
U.I.C.	Always E	x	Always E

Totals (Boards or Commissions)	(a)	(b)	(c)
Always in English	11	5	15
Simultaneously	0	0	1
Not applicable	8	14	3
No answer	1	1	1

A N N E X III - G

QUESTION 4: Reasons for departmental practice.

Abbreviations used:

Time = time involved
Practice = past practice
L.Q.F. = lack of qualified French draftsmen
L.D.O. = language of drafting officers
Uni. = uniformity
Costs = costs involved
Others = other reasons.
x = applicable

Department	Time	Practice	L.Q.F.	L.D.O.	Uni.	Costs	Others
Ag.	x		x	x			
D.P.		x	x	x	x	x	
Ext.		x					
Fish.		x					
For.	n/a						
Ind.					x		
Ins.		x					
L.		x					
N.D.	x		x	x		x	
N.H. & W.							language of superior approving officers
N.R. C & E.				x			
N.R. - T.	x	x	x	x	x		
N.A.	x		x	x	x		
P.O.	n/a						
P.W.	n/a						
T. & C.			x	x	x		
T.			x				
V.A.		x	x	x	x		
TOTALS:	4	7	8	8	6	2	1

Question 4 (cont'd.)

Intermediate Agencies	Time	Practice	L.Q.F.	L.D.O.	Uni.	Costs
C.P.S.		x	x	x	x	
C.E.O.	n/a					
C.S.C.	no answer					
C.T.		x	x	x		
S.S.P.C.	x	x		x		
S.S.T.M.		x				
R.C.M.P.	x	x			x	x
TOTALS:	2	5	2	3	2	1

Question 4 (cont'd.)

Board or Commission	Time	Practice	L.Q.F.	L.D.O.	Uni.	Costs	Others
A.E.C.		x		x			
A.T.B.				x			
B.B.G.			x	x	x		
B.G.C.			x				
B.T.C.	no answer						
C.B.C.	n/a						
C.M.H.C.		x	x	x			
C.N.R.					x		
C.P.C.	x				x		
C.W.B.	x		x	x	x	x	
Exp. C.					x		
F.C.C.	no answer						
I.J.C.							Work done jointly with U.S.A. no need of French.
N.D.R.B.	no answer						
N.E.B.				x			
St.L.S.A.				x			Drafted in conjunction with U.S.A.
T.A.B.		x					
U.I.C.		x		x			
TOTALS (Boards and Commissions)	2	4	4	8	5	1	

A N N E X III - H

QUESTION 9:

a) the number of legal officers in the Department.

b) the number of bilingual legal officers in the Department.

Abbreviations used: (a) = number of legal officers

(b) = number of bilingual legal officers

footnotes are at the end of the table.

Department	(a)	(b)
Ag.	2	1
D.P.	8	3
Ext.	15	7
Fin.	3	0
Fish.	2	0
For.	0	0
Ind.	0	0
Ins.	0	0
L.	1	0
N.D.	58	9
N.H. & W.	3	3
N.R. C.&E.	4	3
N.R.- T.	26	6
N.A.	3	no answer
P.W.	5	1
P.O.	1	1
T. & C.	1	1
T.	3	1
V.A.	45	9
TOTALS:	180	45

(cont'd.)

Question 9 a) and b) (cont'd.)

footnote at end of table

Intermediate Agencies	(a)	(b)
C.P.S.[1]	0	0
C.E.O.	0	0
C.S.C.	0	0
C.T.	2	0
S.S.P.C.	0	0
S.S.T.M.	1	1
R.C.M.P.	14	2
TOTALS:	17	3

1. "The Canadian Penitentiary Service has no legal officers, as such. The Commissioner of Penitentiaries is, however, a member of the legal profession and an experienced draftsman of legislation in the Justice Department. All the subordinate legislation of the Service is subject to his scrutiny and those parts which require his specific approval are either drafted or revised by him personally. Among his senior associates are several fully bilingual officers with long experience in Service operations who contribute to the drafting process. This, coupled with an intra-Service arrangement for translation, practically eliminates any possibility of problems in interpretation."

Question 9 a) and b) (cont'd.)

Board or Commission	(a)	(b)
A.E.C.	1	0
A.T.B.	3	1
B.B.G.	1	0
B.T.C.	2	2
C.B.C.	4	2
C.M.H.C.	10	3
C.N.R.	28	8
C.P.C.	1	0
C.W.B.	2	0
Exp. C.	1	1
F.C.C.	11	2
I.J.C.	1	0
N.C.C.	1	0
N.E.B.	2	0
St.L.S.A.	4	2
U.I.C.	8	2
TOTALS:	80	23

Question 9 c): The degree of facility with which the bilingual legal officer reads and writes both languages.

Abbreviations used:
E = Excellent
G = Good
A = Average
P = Poor
X = Not applicable
footnotes at the end of the table.

Department	English	French
Ag.	E	A to P
D.P.	E	A
Ext.	no answer	E to P
Fin.	x[1]	x
Fish.	x	x
For.	x	x
Ind.	x	x
Ins.	x	x
L.	x	x
N.D.	E	E
N.H. & W.	E	A to P
N.R. C. & E.	E	E
N.R. - T.	G	E
N.A.	E	A to P
P.W.	E	E
P.O.	E	E
T. & C.	E	A
T.	E	E
V.A.	G	E

(cont'd.)

Question 9 c) (cont'd.)

TOTALS (Depts.)	n/a	E	G	A	A to P	no answer	E to P
English	6	10	2	---	------	1	
French	6	7	---	2	3		1

1. The Department of Finance stated: "It was indicated, in reply to question 9, that none of the legal officers in the Department are bilingual. It might be noted that one of these officers can read, speak and understand French fairly well, but has limited writing ability in that language."

Question 9 c) (cont'd.)

Intermediate Agencies	English	French
C.P.S.	x	x
C.E.O.	x	x
C.S.C.	x	x
C.T.	x	x
S.S.P.C.	x	x
S.S.T.M.	E	E
R.C.M.P.	G	G

TOTALS: (Agencies)	Excellent	Good
English	1	1
French	1	1

Question 9 c) (cont'd.)

Board or Commission	English	French
A.T.B.	G	G
B.T.C.	E	G
C.B.C.	G	G
C.M.H.C.	E - G	E
C.N.R.	E	E
Exp.C.	E	E - G
F.C.C.	E - A	E
St.L.S.A.	G	G
U.I.C.	G	E

TOTALS (Boards and Commissions)	Excellent	Good	Excellent-G	Excellent-Average
English	3	4	1	1
French	4	4	1	0

A N N E X III - I

QUESTION 5: Translation of different types of subordinate legislation: Government Departments.

A - regulations published in the Canada Gazette.

Abbreviations used:

Where = where they are translated

By whom = by whom they are translated

what stage = at what stage in the drafting process is the translation done

Dept. = translation staff in Department

C.T.B. = Central Translation Bureau

T. = Translator seconded from C.T.B.

A.F.D. = after final draft

D.F.D. = during final draft

Department	Where	By whom	What stage
Ag.	Dept.	T.	A.F.D.
Ext.	Dept.	T.	A.F.D.
Fin.	Dept. or C.T.B.	T.	A.F.D.
Fish.	Dept.	T.	A.F.D.
For.	Dept. or C.T.B.	Officials of Dept. or T.	x
Ind.	C.T.B.	T.	A.F.D.
Ins.	C.T.B.	T.	A.F.D.
L.	Dept.	T.	A.F.D.
N.D.	Dept. or C.T.B.	T. in Dept. or T. in C.T.B.	A.F.D.
N.H. & W.	Dept.	T.	A.F.D.
N.R. C & E	Dept.	T.	A.F.D.

(cont'd.)

Question 5 A (cont'd.)

Department	Where	By whom	What stage
N.R. - T.	Dept.	T.	A.F.D.
N.A.	Dept.	T.	D.F.D.
P.W.	Dept.	T.	A.F.D.
P.O.	Dept.	T.	A.F.D.
T.&.C.	Dept.	T.	A.F.D.
T.	C.T.B.	T.	A.F.D.
V.A.	Dept.	T.	A.F.D.

Where:	Dept.	Dept. or C.T.B.	C.T.B.
TOTALS:	12	3	3

By whom:	T. (Dept.)	T. (C.T.B.)
TOTALS:	2	18

What stage:	A.F.D.	D.F.D.	N/A
TOTALS:	16	1	1

QUESTION 5

B - regulations exempted from publication in the Canada Gazette.

Abbreviations used:

Where = where they are translated

By whom = by whom they are translated

what stage = at what stage in the drafting process is the translation done

Dept.= translation staff in Department

C.T.B.= Central Translation Bureau

T.= Translator seconded from C.T.B.

A.F.D.= after final draft

D.F.D.= during final draft

Department	Where	By whom	What stage
Ag.	n/a		
D.P.	n/a		
Ext.	n/a		
Fin.	C.T.B. or Dept.	T.	A.F.D.
Fish.	n/a		
For.	n/a		
Ind.	n/a		
Ins.	n/a		
L.	n/a		
N.D.	Dept. or C.T.B.	Official of Dept. or T.	D.F.D. or A.F.D.
N.H. & W.	n/a		
N.R. C & E	n/a		
N.R.- T.	n/a		

(cont'd.)

Question 5 B (cont'd.)

Department	Where	By whom	What stage
N.A.	n/a		
P.W.	Dept.	Official in Dept.	D.F.D.
P.O.	Dept.	T.	A.F.D.
T. & C.	n/a		
T.	C.T.B.	T.	A.F.D.
V.A.	not translated		

Where:	Dept.	Dept. or C.T.B.	C.T.B.	n/a
TOTALS:	2	2	1	14

By whom:	T.(Dept.)	T.(C.T.B.)
TOTALS:	2	4

What stage:	A.F.D.	D.F.D.
TOTALS:	4	2

QUESTION 5

C - rules, orders, instructions, not included within the terms of the Regulations Act.

Abbreviations used:

where = where they are translated

by whom = by whom they are translated

what stage = at what stage in the drafting process is the translation done

Dept. = translation staff in Department

C.T.B. = Central Translation Bureau

T. = translated seconded from C.T.B.

A.F.D. = after final draft

D.F.D. = during final draft

Department	Where	By whom	What stage
Ag.	Dept.	T.	A.F.D.
D.P.	C.T.B.	T.	A.F.D.
Ext.	Dept.	T.	A.F.D.
Fin.	Dept.	T.	A.F.D.
Fish.	n/a - no translations done		
For.	n/a		
Ind.	Dept.	Official of Dept.	A.F.D.
Ins.	C.T.B.	T.	A.F.D.
L.	n/a		
N.D.	n/a		
N H & W	Dept.	T.	A.F.D.
N.R. C & E	Dept.	T.	A.F.D.
N.R. - T.	Dept.	T.	A.F.D.

(cont'd.)

Question 5 C (cont'd.)

Department	Where	By whom	What stage
N.A.	n/a		
P.W.	n/a		
P.O.	Dept.	T.	A.F.D.
T. & C.	Dept.	T.	A.F.D.
T.	C.T.B.	T.	A.F.D.
V.A.	not translated		

Where:	Dept.	C.T.B.	n/a
TOTALS:	9	3	7

By whom:	T.(C.T.B.)	Official of Dept.
TOTALS:	11	1

What stage:	A.F.D.	D.F.D.
TOTALS:	12	0

Intermediate Agencies

Question 5A : regulations published in the Canada Gazette.

Intermediate Agencies	Where	By whom	What stage
C.P.S.	C.T.B.	T.	A.F.D.
C.E.O.	Dept. of Justice	Dept. of Justice	no answer
C.S.C.	Dept. of Finance	T.	A.F.D.
C.T.	x		
S.S.P.C.	Dept.	T.	A.F.D.
S.S.T.M.	C.T.B.	T.	A.F.D.
R.C.M.P.	x		

Where:	Dept.	C.T.B.	Others	n/a
TOTALS:	1	2	Dept. of Justice and Dept. of Finance	2

By whom:	T.	Others
TOTALS:	4	Dept. of Justice

What stage:	A.F.D.	No answer
TOTALS:	4	1

Question 5 B : regulations exempted from publication in the Canada Gazette.

Intermediate Agencies	Where	By whom	What stage
C.P.S.	In Dept.	Official of Dept.	A.F.D.
C.E.O.	x	x	x
C.S.C.	x	x	x
C.T.	x	x	x
S.S.P.C.	x	x	x
S.S.T.M.	x	x	x
R.C.M.P.	n/a (not translated; if needed the translation would be made by an Official of the Department)		

Where:	Dept.	n/a
TOTALS:	1	6
By whom:	Official in Dept.	n/a
TOTALS:	1	6
What stage:	A.F.D.	n/a
TOTALS:	1	6

Question 5 C: rules, orders , instructions, not included within the terms of the Regulations Act.

Intermediate Agencies	Where	By whom	What stage
C.P.S.	In Dept.	Official of Dept.	A.F.D.
C.E.O.	In Dept.	Official of Dept.	D.F.D.
C.S.C.	x	x	x
C.T.	C.T.B.	T.	A.F.D.
S.S.P.C.	x	x	x
S.S.T.M.	x	x	x
R.C.M.P.	n/a (not translated; if needed the translated would be made by an official of the Department)		

Where:	Dept.	C.T.B.	n/a
TOTALS:	2	1	4
By whom:	Official of Dept.	T.	n/a
TOTALS:	2	1	4
What stage:	A.F.D.	D.F.D.	n/a
TOTALS:	2	1	4

Boards and Commissions

Question 5 A: regulations published in the Canada Gazette.-

Board or Commission	Where	By whom	What stage
A.E.C.	n/a	n/a	n/a
A.T.B.	Dept. of Transp. Translation Office	T.	A.F.D.
B.B.G.	C.T.B.	T.	A.F.D.
B.G.C.	In Dept.	T.	A.F.D.
B.T.C.	n/a	n/a	n/a
C.B.C.	n/a	n/a	n/a
C.M.H.C.	In Dept.	T.	A.F.D.
C.N.R.	In Dept.	T. in own translation staff	A.F.D.
C.P.C.	n/a	n/a	n/a
C.W.B.	Dept. of T & C Trans. Bureau	T.	A.F.D.
D.C.B.	Mines Branch Trans. Bureau	T.	A.F.D.
Exp. C.	n/a	n/a	n/a
F.C.C.	In Dept.	own T.	A.F.D.
I.J.C.	n/a	n/a	n/a
N.C.C.	In Dept.	T.	A.F.D.
N.D.R.B.	n/a	n/a	n/a
N.E.B.	Privy Council office	T.	A.F.D.
St.L.S.A.	C.T.B.		A.F.D.
T.A.B.	n/a	n/a	n/a
U.I.C.	In Dept.	own T.	A.F.D.
TOTALS:	6 In Dept. 4 Other Dept. 2 C.T.B. 8 n/a	8 T 3 own T 8 n/a	12 A.F.D. 8 n/a

(cont'd.)

Question 5 B: regulations exempted from publication in the Canada Gazette.

Board or Commission:	Where:	By whom:	What stage:
A.T.B.	Dept.of Transp. Translation Bureau	T.	A.F.D.
A.E.C.	no translation	n/a	n/a
B.T.C.	C.T.B.	T.	A.F.D.
C.N.R.	In Dept.Translation office	Dept.T.	A.F.D.
C.W.B.	n/a no translation	n/a	n/a
N.C.C.	in Dept.	Official of Dept.	A.F.D.

Where:	Dept.	C.T.B.	Others:	n/a
TOTALS:	2	1	1	2

By whom:	T.	Dept.	n/a
TOTALS:	2	2	2

What stage:	A.F.D.	n/a
TOTALS:	4	2

Question 5 C : rules , orders, instructions, not included within the terms of the Regulations Act.

Board or Commission:	Where:	By whom:	What stage:
A.T.B.	T.B. of Govt.Dept.	T.	A.F.D.
A.E.C.	n/a	no trans.	n/a
B.B.G.	In Dept.	T.	A.F.D.
B.G.C.	n/a	no trans.	n/a
C.B.C.	In Dept.	T.	A.F.D.
C.M.H.C.	In Dept.	T.	A.F.D.
C.N.R.	In Dept.	T.of own Dept.	A.F.D.
C.P.C.	In Dept.	T.	A.F.D.
Exp.C.	In Dept.	Official of Dept.	A.F.D.
F.C.C.	In Dept.	own T.	A.F.D.
N.C.C.	In Dept.	Official of Dept.	A.F.D.
N.D.R.B.	In Dept.,	T	A.F.D.
N.E.B. (see comments)	In Dept. & C.T.B.	T	A.F.D.
St.L.S.A.	C.T.B.	Dept. of Trans.T.	A.F.D.
T.A.B.	In Dept.	own T.	A.F.D.
U.I.C.	In Dept.	own T.	A.F.D.

Where:	Dept.	C.T.B.	Others:	n/a:
TOTALS:	11	2	1	2
By whom:	T.	Dept.	Others:	n/a:
TOTALS:	7	6	1	2
What stage:	A.F.D.	n/a		
TOTALS:	14	2		

(cont'd)

Comments:

The N.E.B. stated:

> "Some documents are translated into French by officials of the Board but where feasible. as for example where time is not a factor. such documents are forwarded to the Translation Bureau. Some documents. such as orders, are relatively short and therefore it is not desirable to send them outside the Board for translation."

A N N E X III - J

QUESTION 10 (a): problems created by simultaneous drafting in English and in French.

Note: footnotes at end of table.

Department	No problems	Problems
Ag.		Yes - hard to coordinate
D.P.		Yes - interpreting
Ext.		Yes - unnecessary duplication of work
Fin.		Yes - two separate draftsmen
Fish.	no problems	
For.	none, if adequate personnel	
Ind.	no problems	
Ins.		Yes - costs
L.	no answer	no answer
N.D.		Yes - thousands of translators would be required; delay in issuing rules, orders, etc. in both languages.[1]
N.H. & W.		Yes - loss of time, etc.[2]
N.R. C. & E.		Yes - cumbersome, slow, expensive and unnecessary
N.R. - T.		Yes - insufficient work to hire an officer
N.A.		SEE COMMENTS[3]
P.W.		Yes - duplication
P.O.	no answer	no answer
T. & C.		Yes - impossible
T.		Yes
V.A.		Yes - bilingual draftsmen and senior officers needed

Question 10 (a) (cont'd.)

Intermediate Agencies	No Problems	Problems
C.P.S.	no answer	
C.E.O.	no answer	
C.S.C.	no answer	
C.T.		Yes - delays
S.S.P.C.		Yes - time
S.S.T.M.		Yes - time
R.C.M.P.		Yes - personnel - time - costs
	0	4

Question 10 (a) (cont'd.)

Board or Commission	No Problems	Problems
A.E.C.	x (if adequate staff)	
A.T.B.		Yes - wasteful duplication
B.B.G.		Yes -
B.T.C.		Yes
C.B.C.	x	
C.M.H.C.		Yes - staff
C.P.C.		Yes
C.W.B.		Yes
Exp. C.		Yes - difficulty in communication with other members of team; no previous consistency in preparing French texts.
F.C.C.		Yes - delays
I.J.C.		Yes - cost prohibitive as too many persons involved
N.C.C.	x	
N.D.R.B.		
N.E.B.		Yes - best to have only one draftsman to avoid conflict.
St.L.S.A.		Yes - French inappropriate for joing regulations; Uniformity liable to suffer
U.I.C.	x	
TOTALS:	4	11

A N N E X III - K

QUESTION 10 (b): 1. problems of interpretation of regulations published in two languages.

2. problems encountered with regulations of your Department.

Abbreviations used: x = applicable

Department	Problems No	Problems Yes	Problems encountered
Ag.		x	
D.P.		x	none
Ext.	x		
Fin.		x	none
Fish.	x		
For.	x		
Ind.		x	none
Ins.	x		
L.		x	Fair Wages Policy[1]
N.D.		x	
N.H. & W.		x	solution given[2]
N.R. C & E		x	often[3]
N.R. - T.	x		
N.A.	x		
P.W.	x		
P.O.	x		
T. & C.		x	
T.	x		
V.A.	x		
	10	9	

footnote on next page.

Question 10 (b) (cont'd.)

Comments.

1. The Department of Labour stated:

> "In dealing with labour conditions which spring from Fair Wages Policy Order, it was found that the translators failed to take advantage of an original Policy Order which had been translated into French for the purpose of publication in the Canada Gazette. The result was that the proposed labour conditions given by the translators some years ago did not conform to the original French translation as contained in the Canada Gazette."

2. The Department of National Health and Welfare stated:

> "This could perhaps be overcome were both drafts - (both languages) prepared before publication of either. and in collaboration between translator and drafter."

3. The Customs & Excise Division of the Department of National Revenue commented:

> "Difficulties have been encountered in ascertaining the true meaning of regulations in appeals to the Tariff Board."

Question 10 (b) (cont'd.)

Abbreviations used: x = applicable

Intermediate Agencies	Problems No	Problems Yes	Problems encountered
C.P.S.	x[1]		
C.E.O.	no answer		
C.S.C.	no answer		
C.T.		x	(hard to get same shades of meaning)
S.S.P.C.	x		
S.S.T.M.	x		
R.C.M.P.		x	
	3	x	

1. The Canadian Penitentiary Service stated: "Penitentiary Regulations, in one form or another, have existed since confederation. Penitentiary Regulations (1933) were published in both English and French and were distributed to each individual employee according to his linguistic need. No problems in interpretation of any consequence were ever encountered, so far as is now known."

Question 10 (b) (cont'd.)

Board or Commission	Problems No	Problems Yes	Problems encountered
A.E.C.	x		
A.T.B.	x		
B.B.G.		x	
B.T.C.	x		
C.B.C.	x		
C.M.H.C.	x		
C.N.R.	x		
C.P.C.	x		
C.W.B.		x	
Exp.C.		x	technical export terms - some countries use French, most use English.
F.C.C.	x		
I.J.C.		x	
N.C.C.	x		
N.D.R.B.	x		
N.E.B.		x	different shades of meaning in English and French texts.
St.L.S.A.	x		
T.A.B.	x		
U.I.C.	x		
	13	5	

A N N E X III - L

QUESTION 6: The language in which regulations which are exempted from publication in the Canada Gazette are issued.

Abbreviations used: E = English only
F = French only
E & F = English and French

Department	E & F	E	F
Ag.	n/a		
D.P.	n/a		
Ext.	n/a		
Fin.	7	43	0
Fish.	n/a		
For.	n/a		
Ind.	n/a		
Ins.	n/a		
L.	n/a		
N.D.	hundreds	many thousands	many hundreds
N.H. & W.	n/a		
N.R. C & E	n/a		
N.R. - T.	n/a		
N.A.	n/a		
P.W.	0	300	94
P.O.	10 types	2 types	0
T. & C.	n/a		
T.	1	0	0
V.A.	n/a		

Question 6 (cont'd.)

TOTALS (Depts.):	E & F	E	F	n/a
	4	4	2	14

Intermediate Agencies	E & F	E	F
C.P.S.	2	18	0
C.E.O.	n/a		
C.S.C.	n/a		
C.T.	n/a		
S.S.P.C.	n/a		
S.S.T.M.	n/a		
R.C.M.P.	0	4	0

TOTALS (Agencies):	E & F	E	F	n/a
	1	2	0	5

Question 6 (cont'd.)

Board or Commission	E & F	E	F
A.T.B.	8	0	0
B.T.C.	500	2640	0
C.N.R.	All pursuant to s. 293 of Act		
C.W.B.	0	1402	0
N.C.C.	0	yes	0
TOTALS: (Boards and Commissions)	3	3	0

Comments on language of regulations exempted from publication in the Gazette (question 6):

Question 6 of the questionnaire was aimed at establishing the languages used for issuing regulations exempted from publication in the Canada Gazette. The various Departments and Agencies were asked in addition to list in very general terms the different types of regulation issued in both languages or in either English or French only. Those replying did as follows:

DEPARTMENTS:

(a) Dept. of Finance:

In both languages:

Most regulations that are published in the Gazette.

In English only:

Most regulations that are not to be published in the Gazette.

In French only:

N/A

(b) Dept. of National Defence:

In both languages:

In the units where both languages are used all regulations on a permanent or semi-permanent nature.

In English only:

All official regulations issued for the Department in general are first published in English only, and may be translated and published into French later on if required.

In French only:

In those units where regulations are issued in French only all Orders and instructions which relate to units where French is the predominent language spoken.

(c) The Post Office:

In both languages:

Manual of Financial Procedure, Personnel, Manual, Manual for Staff Post Offices, Manual for Semi-Staff and Revenue Post Offices, Headquarters Directives, Headquarters Numbered and Unnumbered Circulars, Manual of Instructions to Letter Carriers, P.O. Weekly Bulletin, Canada Postal Guide.

In English only:

Manual of Instructions to Letter Carriers Emergency Plans.

In French only:

Nil

Comments:

The answers to questions 6 and 7 apply to instructions and regulations originating at Headquarters and which are generally applicable to the service. Instructions originating at District Office level are published , as required, in English or French or in both English and French.

(d) Dept. of Transport:

In both languages:

All Schedules to the Steamship Construction Regulations.

In English only:

Dangerous Goods Shipping Regulations - French translation prepared in part but difficulty in agreeing on acceptable French language labels prevented completion of the translation.

In French only:

Nil.

INTERMEDIATE AGENCIES:

(a) R.C.M.P.

In both languages:

Nil

In English only:

Regulations are published in English respecting the organization , training, discipline, efficiency, administration and good government of the Force and generally for carrying the purposes and provisions of this Act into effect.

In French only:

Nil

(b) Canadian Penitentiary Service:

In both languages:

Commissioner's Directives (Vide Penitentiary Act, SC 1960-61, c. 53, s. 29 (3)).

In English only:

As above; see Comment.

In French only:

None

Comments:

" It is the policy of the Service that the Commissioner's Directives (which are exempt from publication in the Gazette) shall be issued in both English and French. Due to a massive reorganization and overhaul of its subordinate legislation pursuant to the new Penitentiary Act, and to our initial inability to obtain prompt translation services outside of our Service, a considerable time delay has built up as between the French and English texts. Having set up our own translation facility at the Regional Office for the Quebec Region (at St. Vincent de Paul), we are now rapidly closing the gap. It is hoped that, within the next year or so, there will be not more than a week or two of lag between the publication of directives in English and French. Simultaneous publication might eventually be practicable."

BOARDS AND COMMISSIONS

(a) Canadian Wheat Board

In both languages: "Nil"

In English only: "Orders allocating railway cars to delivery points. Instructions to the Trade: (a) establishing general quotas for delivery of grain to elevators by producers (b) establishing quotas for specific delivery points, (c) regarding the issuance of permit books (d) regarding the delivery of grain to Feed Mills, (e) various instructions to Shippers and Exporters regarding the manner of shipping grain, (f) establishing the terms of sale of Board grain to shippers (g) regarding the exchange of grain by producers for seeding purposes, (h) regarding inter-provincial transportation of seed grain, (i) regarding export of seed wheat. (There Instructions were issued to Shippers, Exporters and to the head offices of Grain Companies.)"

In French only: "Nil"

(b) Canadian National Railways

In both languages:

"Rules and regulations made pursuant to Section 293 of the Railway Act."

(c) Board of Transport Commissioners

In both languages:

"Orders pertaining to matters or works in the Province of Quebec and Orders from any province when the application is made in French."

"Also General Orders affecting the public."

In English only:

"Orders directed at management of railway, telegraph and telephone companies or affecting such companies only, such as the manner in which accidents occurring on the railways should be reported; the marshalling of equipment on passenger trains; the railway safety appliance standards; regulations for interlocking systems on the railway; railway bridges over navigable waters, etc."

In French only:

"None"

Comments:

"The Board also issues other orders of a general character. Such orders are entitled "General Orders". They may be divided into two classes:

(a) orders directed at management of railway, telegraph and telephone companies or affecting such companies only, such as the manner in which accidents occurring on the railways should be reported; the marshalling of equipment on passenger trains; the railway safety appliance standards; regulations for interlocking systems on the railway; railway bridges over navigable waters, etc.; and

(b) orders which are directed at or affecting such companies, and also the municipalities or the provinces, such as the requirements of the Board for the construction of grade separations; construction of crossings; apportionment of cost

for installation, operation and maintenance of protection at crossings; preparation of accounts by road authorities respecting cost of words ordered or approved by the Board, etc.

All orders in the (b) class above issue in both French and English, whereas orders in class (a) would ordinarily issue in English only.

Except for General Orders most of the orders issued are issued upon application; if the application is in French the order will issue in both French and English; if the application is in English, except from the Province of Quebec, the order will issue in English only."

(d) Société Radio-Canada

Dans les deux langues:

"Statuts administratifs de la Société Radio-Canada"

En français seulement:

"Aucuns"

En anglais seulement:

"Aucuns"

(e) Export Credits Insurance Corp.

In English only: "Instructions to Staff."

A N N E X III - M

QUESTION 7: The language in which the rules, orders, instructions, not included within the terms of the Regulations Act are issued.

Abbreviations used:

E & F = English and French

E = English only

F = French only

Department	E & F	E	F
Ag.	Some - impossible to estimate	Some - impossible to estimate	0
D.P.	22	63	0
Ext.	5	30	0
Fish.	0	All-465	0
Fin.	n/a		
Ind.	10	0	0
Ins.	0	9	1
L.	n/a		
N.D.	n/a		
N.H. & W.	All	0	0
N.R. C. & E.	65	670	0
N.R. - T.	10	0	0
N.A.	n/a (Territorial Regs. on another form)		
P.W.	n/a		
P.O.	4 types	(1630)0	0
T. & C.	3	0	0
T.	70	500	50
V.A.	0	200	0

(cont'd.)

Question 7 (cont'd.)

TOTAL (Depts.)	E & F	E	F	n/a
	10	8	2	5

Intermediate Agencies	E & F	E	F
C.P.S.	14	70	4
C.E.O.	1	0	0
C.S.C.	n/a		
C.T.	0	265	0
S.S.P.C.	n/a		
S.S.T.M.	n/a		
R.C.M.P.	0	158	0

TOTAL (Agencies)	E & F	E	F	n/a
	2	3	1	3

Question 7 (cont'd.)

Board or Commission	E & F	E	F
A.E.C.	0	All	0
A.T.B.	All	0	0
B.B.G.	15	0	0
B.G.C.	0	8	0
C.B.C.	3	0	0
C.M.H.C.	2	0	0
C.N.R.	Some	Most	0
C.P.C.	5	25	0
Exp. C.	0	15	0
F.C.C.	2	0	0
I.J.C.	0	11	0
N.D.R.B.	0	65	0
N.E.B.	12	494	0
St.L.S.A.	3500	3000	500
T.A.B.	3000	0	0
U.I.C.	265	9	0
TOTALS: (Boards and Commissions)	11	10	1

Comments on language of regulations not covered by the Regulations Act (question 7)

In question 7 we inquired about the language of rules, orders and instructions not falling within the terms of the Regulations Act. This question was supplemented by a request to indicate in very general terms in which cases such rules, orders and instructions were issued in both languages or in either English or French only. The replies to the latter inquiry are tabulated hereinafter:

DEPARTMENTS:

(a) Department of Agriculture:

In both languages:

"Directives regarding procedures to be followed where directives are to both French and English staff - Forms that pursuant to Regulations may be approved by the Department."

In English only:

"Directives made pursuant to authority of Regulations, when the Directives are intended solely for English speaking firms."

(b) Department of Defence Production:

In both languages:

"Departmental Circular Letters which deal mainly with Administration within the Department."
"(since February, 1965)"

In English only:

"(1) DDP Manual (which are the Departmental instructions to the staff on matters of policy, general administration and departmental procedures)."

"(2) Deputy Ministers Directives (which are dealing with policy and procedures to be followed in specific cases)."

"(3) Canadian Commercial Corporation Operating Instructions, which deal with policy and procedures of the Corporation."

(c) Department of External Affairs:

In both languages:

"Two general manuals

1 - Manual of Departmental procedures
2 - Manual of Post Administration
and several manuals issued for special purposes such as

1 - Consular Instructions
2 - Passport regulations
3 - Supplies and property manual
4 - Security Instructions"

(d) Department of Finance:

In both languages:

"Very few are published in French. Those that are published in French appear to be some of the more important ones made under section 7 of the Financial Administration Act."

Comments:

"The questions in this questionnaire do not cover other rules, orders or instructions not included within the terms of the Regulations Act which affect the Public Service as a whole. The Treasury Board issues many of these, such as

(a) Treasury Board circular letters, approximately 60 of which were issued in 1964, 1/3 of these were issued in both languages; and

(b) management improvement circulars, approximately 60 were issued in 1964."

(e) Department of Fisheries:

In English only:

"Orders made by Director, Pacific Area, under British Columbia Fishery Regulations with respect to fishing in tidal waters."

(f) Department of Industry:

In both languages:

"Orders and instructions in the area of Departmental personnel administration."

In English only:

"All other orders and instructions."

In French only:

"None"

(g) Department of Insurance:

In both languages:

"None"

In English only:

"Instructions to the insurance, loan, trust and small loans companies and co-operative credit associations on the methods to be used in compiling annual statements. These are not necessarily amended or sent to all of the companies each year."

In French only:

"Instructions to one insurance company on the methods to be used in compiling its annual statement. We are now in the process of having instructions translated into French for the life insurance companies and fraternal benefit societies."

(h) Department of National Health and Welfare:

In both languages:

"Rules and Regulations - Medical Council of Canada, Health Grants and Hospital Construction Grants Rules."

(i) Department of National Revenue - Customs and Excise:

In both languages:

"Enforcement of Customs and Excise laws, protection of revenue, proper classification and valuation of goods, remission of duty and taxes, licensing, warehousing, tourists and travellers baggage and vehicles, commercial vehicle regulations, sales and excise taxes, excise duty regulations covering operations at distilleries, breweries, bonded factories, tobacco factories, etc."

In English only:

"Instructions for port officers in the performance of their duties at ports of entry."

(j) Department of National Revenue - Taxation Division

In both languages:

"This department issues the instructions to the public in both English and French."

(k) Post Office:

In both languages:

"Headquarters Directives
Numbered and Unnumbered Circulars
P.O. Weekly Bulletin"

Comments:

"The answers to questions 6 and 7 apply to instructions and regulations originating at Headquarters and which are generally applicable to the service. Instructions originating at District Office level are published, as required, in English or French or in both English and French."

(l) Department of Trade and Commerce:

In both languages:

"Departmental instructions regarding inspection of electricity meters are issued as instructions to field staff and public agencies concerning the interpretation of Electricity Meter Regulations and Procedures to carry out the requirements of the Electricity Inspection Act. General permits under the Export and Import Permits Act."

(m) Department of Transport:

In both languages:

"Plans, Specifications & Contract documents originating in the Montreal Region.
Radio Standards Procedures & Specifications.
Coast Guard General Orders.
Coast Guard Standing Instructions.
Information Circulars."

In English only:

"Plans, Specifications & Contracts not originating in Montreal Region.
Manuals of Licensing Policy & Instructions to Inspectors."

In French only:

"Nil"

(n) Department of Veterans Affairs:

In English only:

"The instructions published by the Department, for use within the Department, consist of seven volumes of detailed directions as to the procedure to be followed in administering all the phases of the work of the Department."

INTERMEDIATE AGENCIES

(a) R.C.M.P.:

In English only:

"Rules, known as Standing Orders, are made by the Commissioner of the R.C.M. Police pertaining to the organization, training, discipline, efficiency, administration and good government of the Force."

(b) Canadian Penitentiary Service:

In both languages:

"Divisional Staff Instructions (Vide Penitentiary Service Regulation 1.14)"

In English only:

"(a) As above; see Comment.

(b) Standing Orders (vide PSR 1.15) by heads of institutions in provinces other than Quebec."

In French only:

"Standing Orders by heads of institutions in the province of Quebec only."

Comments:

"(a) In respect of the Divisional Staff Instructions, the same remarks apply as for Question 6.

(b) The institutional Standing Orders have not, thus far, been published in two languages. It has been the custom, rather, to publish Standing Orders in the main language of the institution; that is to say, the one language which every member of the staff is required to know. See Annex 2. As Standing Orders have particular application to the locality where issued, and as sets of such Orders issued in different localities are generally similar and in some respects identical, no compelling need is seen at this time to require publication of any set of institutional Standing Orders in both languages."

(c) Comptroller of the Treasury:

In English only:

"* Comptroller of the Treasury Manual - amendments issued approximately 15 times per year, each issue comprising about 75 pages, each page containing one or more amendments.

Personal Letters - dealing with personal policy and administration (35).

Treasury Memoranda - convey instructions relating to specific situations and/or continuing policy and procedures (95).

Treasury Directives - convey to all Treasury offices policy and interpretation (120).

* The Comptroller of the Treasury Manual provides guidance to Treasury Officers and departments in regard to financial administration and expenditure control practices of the Government of Canada. There are approximately 1100 copies of the Manual in use."

BOARDS AND COMMISSIONS

(a) Atomic Energy of Canada Ltd.:

In English only:

"Company By-laws

Company-Wide Standard Policies and Procedures"

(b) Canadian National Railways:

In English only:

" - Company's by-laws are published in English only.

- Most of the other rules, orders and instructions are published in English; however when they are to be used in the Province of Quebec they are normally translated."

(c) Société Radio-Canada:

Dans les deux langues:

"Statuts administratifs de la Société Radio-Canada"

(d) Canadian Pension Commission:

In both languages:

"All instructions for the public are published in both the English and French languages."

In English only:

"Instructions for internal office use are published in English only."

(e) Exports Credits Insurance Corp.:

In English only:

"Instructions to staff."

(f) Farm Credit Corp.:

In both languages:

"1. Regulations pursuant to Section 19 of the Farm Credit Act defining certain expressions in the Act and providing for the mode of applying for loans, the fees payable on applications, the repayment terms, principles in appraising land, insurance requirements, method of applying payments and sundry procedural matters.

2. Regulations pursuant to Section 9 of the Farm Machinery Syndicates Credit Act prescribing the terms and conditions of syndicate agreements, mode of application for loans, application of payments and defining certain expressions used in the Act.

3. By-laws for conduct and arrangement of operations."

(g) International Joint Commission:

In both languages:

"None"

In English only:

"1. Rules of Procedure of the International Joint Commission

2. Orders of Approval and related orders issued by the International Joint Commission pursuant to the Boundary Waters Treaty of 1909 and other Treaties and Conventions

3. Instructions to the Commission's international boards of control, engineering boards and technical advisory boards."

In French only:

"None"

(h) National Energy Board:

In both languages:

"Those types of documents such as crossing orders, approval orders of various kinds, etc., the application for which is submitted to the Board in the French language. Where it is the practice of the Board to require consent of a party before the making of the order where the consent is in the French language, the resulting documents is issued in both English and French."

In English only:

"Those documents referred to above where the French language has not been used in submissions made to the Board prior to the issuance of the document requested."

(i) Unemployment Insurance Commission:

In both languages:

"Administrative Services circulars, releases, appendices and general instructions;
Employment circulars, releases and general information;
Adjudication instructions;
Benefit instructions;
Contribution instructions;
Enforcement instructions."

In English only:

"Audit instructions."

A N N E X III - N

QUESTION 8: Delay in the publication of regulations not published in the Gazette and of those orders, rules, instructions, not included within the terms of Regulations Act.

Abbreviations used:

(a) = regulations not published in the Gazette

(b) = rules, orders, instructions not within the Regulations Act

S = publication is simultaneous

N S = publication is not simultaneous (the delay of publication is between brackets)

Department	(a)	(b)
Ag.	N S (1 week)	N S (1 week)
D.P.	x	no answer
Ext.	n/a	N S
Fin.	S	S
Fish.	x	x
For.	x	x
Ind.	x	S
Ins.	x	N S
L.	x	x
N.D.	N S	x
N.H. & W.	N S (10 days)	N S (10 days)
N.R. C. & E.	x	N S (1 week) some S
N.R. - T.	x	S
N.A.	x	x
P.W.	no answer	x
P.O.	Mostly S some N S (1 week)	Mostly S some N S (1 week)

(cont'd.)

Question 8 (cont'd.)

Department	(a)	(b)
T. & C.	x	S
T.	S	S
V.A.	x	x (not translated)

TOTALS:	(a)	(b)
S	3	5
N S	3	5
x	11	7
No answer	1	1
Mostly S	1	1
Some S	0	1
Some N S	1	1

Question 8 (cont'd.)

Intermediate Agencies	(a)	(b)
C.P.S.	N S (1-3 weeks)	N S (1-3 weeks)
C.E.O.	x	S
C.S.C.	x	x
C.T.	n/a (not published)	n/a (not published)
S.S.P.C.	x	x
S.S.T.M.	x	x
R.C.M.P.	n/a (not published in French)	x

TOTALS:	(a)	(b)
N S	1	1
S	0	1
n/a	6	5

Question 8 (cont'd.)

Board or Commission	(a)	(b)
A.E.C.	no translation	n/a
A.T.B.	S	S
B.B.G.	n/a	S
B.T.C.	S	n/a
C.B.C.	n/a	S
C.M.H.C.	n/a	S
C.N.R.	not S	not S
C.P.C.	n/a	not S(7-10 days)
C.W.B.	no translation	n/a
F.C.C.	n/a	S
N.D.R.B.	n/a	not S(depends on urgency)
N.E.B.	n/a	not S(2-5 days)
St.L.S.A.	n/a	S
T.A.B.	n/a	S
U.I.C.	n/a	not S

TOTALS:	(a)	(b)
N S	1	5
S	2	7
n/a	12	3

A N N E X III - O

ROYAL COMMISSION OF INQUIRY ON BILINGUALISM AND BICULTURALISM

QUESTIONNAIRE CONCERNING THE ADMINISTRATION AND THE DRAFTING IN PUBLICATION OF THE TEXTS OF SUBORDINATE LEGISLATION.

9 Concerning your regulations . . .

a) has your administration drafted and issued regulations

1- in French? Yes_____ No _____

2- in English? Yes_____ No _____

3- in French and in English? Yes_____ No _____

4- not applicable, no regulations are made Yes_____ No _____

b) has the Lieutenant-Governor in council (the Cabinet) issued regulations for your organization ...

1- in French? Yes _____ No _____

2- in English? Yes _____ No _____

3- in French and in English? Yes _____ No _____

4- not applicable, no regulations issued by the Lieutenant-Governor in council _____

c) do the regulations issued by your organization have to be approved by the Lieutenant-Governor in council?

Yes _____

No _____

d) do the regulations of your administration have to be published in the Official Gazette of Quebec?

Yes _____

If yes at what date _____

No _____

e) are there provisions in your regulations concerning

1- the English or French language

Yes _____

If yes please state which provisions _____

No _____

2- a language other than English or French

Yes _____

No _____

11. What role does the Justice Department play in the drafting of the various types of subordinate legislation which are made by your department?

a) Regulations published in the Gazette (check one)

_____ Does all the drafting

_____ Involved in the revision only

_____ Not involved in either the drafting or revision

_____ Not applicable: regulations of this type not issued by our Department

b) Regulations exempted from publication in the Gazette (check one)

_____ Does all the drafting

_____ Involved in the revision only

_____ Not involved in either the drafting or revision

_____ Not applicable: regulations of this type not issued by our Department

c) Other rules, orders or instructions not included within the terms of the Regulations Act (check one)

_____ Does all the drafting

_____ Involved in the revision only

_____ Not involved in either the drafting or revision

_____ Not applicable: rules, orders or instructions of this type not issued by our Department

12. (This question is concerned with the drafting of subordinate legislation in your organization).

A. In what language are those regulations published in the Gazette drafted?

	Always	Sometimes	Never
In English	( )	( )	( )
In French	( )	( )	( )
Concurrently	( )	( )	( )
In English with a translator present	( )	( )	( )
In French with a translator present	( )	( )	( )

Not applicable ( )

B. In what language are those regulations not published in the Gazette drafted?

	Always	Sometimes	Never
In English	( )	( )	( )
In French	( )	( )	( )
Concurrently	( )	( )	( )
In English with a translator present	( )	( )	( )
In French with a translator present	( )	( )	( )

Not applicable ( )

C. In what language are all other less formal rules, orders instructions drafted:

	Always	Sometimes	Never
In English	( )	( )	( )
In French	( )	( )	( )
Concurrently	( )	( )	( )
In English with a translator present	( )	( )	( )
In French with a translator present	( )	( )	( )

Not applicable ( )

13. If you have indicated in reply to question 12 that English is not used in the processof drafting, to which of the following reasons do you attribute the practice of your Department?

	Yes	No
Time involved	( )	( )
Past practice	( )	( )
Lack of qualified English draftsmen	( )	( )
Language of drafting officers	( )	( )
Desire for uniformity	( )	( )
Costs involved	( )	( )

Others (please specify)

14. (This question pertains to the translation of the different types of subordinate legislation).

A. Regulations published in the Gazette: (check which apply)

(i) Where are they translated?

- in your Department ( )
- at the central Translation Bureau ( )
- elsewhere (please specify) ( )

(ii) By whom are they translated?

- An official of your Department ( )
- A member of the Translation Bureau in your Department ( )
- Others (please specify) ( )

(iii) At what stage in the drafting process is the translation done?

- During the first draft ( )
- After the first draft ( )
- During the final draft ( )
- After the final draft ( )

B. Those regulations exempted from publication in the Gazette: (check which apply)

(i) Where are they translated?

- In your Department ( )
- At the central Translation Bureau
- Elsewhere (please specify) ( )

(ii) By whom are they translated?

- An official of your Department ( )
- A member of the Translation Bureau in your Department ( )
- Others (please specify) ( )

(iii) At what stage in the drafting process is the translation done?

- during the first draft ( )
- after the first draft ( )
- during the final draft ( )
- after the final draft ( )

C. All other less formal rules, orders, instructions:

(check which apply)

(i) Where are they translated?

- In your Department ( )
- At the central Translation Bureau ( )
- Elsewhere (please specify) ( )

(ii) By whom are they translated?

- An official of your Department ( )
- A member of the Translation Bureau in your Department ( )
- Others (please specify) ( )

(iii) At what stage in the drafting process is the translation done?

- During the first draft ( )
- After the first draft ( )
- During the final draft ( )
- After the final draft ( )

15. Please state how many of the regulations which are exempted from publication in the Gazette are issued in both languages, in English only, in French only. (See Annex 1)

- In English and French Estimated number June 64-May 31, 65 _____

- In English only Estimated number June 64-May 31, 65 _____

- In French only Estimated number June 64-May 31, 65 _____

16. Please state how many of these less formal rules, orders, instructions are issued in both languages, or in English only or French only. (See Annex 2)

- In English and French Estimated number June 64-May 31, 65 _____

- In English only Estimated number June 64-May 31, 65 _____

- In French only Estimated number June 64-May 31, 65 _____

17. In general, where both English and French texts are published, is the publication (a) of the texts of regulations not published in the Gazette and (b) of all those less formal orders, rules, instructions, simultaneous or is there a delay in the publication of one text?

(i) Regulations not published in the Gazette:

Simultaneous ( )

Not simultaneous ( )

If not simultaneous please estimate the average delay: _____

(ii) All less formal rules, orders, instructions:

Simultaneous ( )

Not simultaneous ( )

If not simultaneous please estimate the average delay: _____

18. (a) How many legal officers are there in your Department?

_____

(b) How many of the legal officers in your organization have a fluent commant of spoken English and French?

_____

(c) How many of the legal officers in your organization have a fluent command of written English and French?

19. (a) What problems, in your view, would simultaneous drafting in English and in French create?

(b) Do you feel that texts of regulations published in two languages present problems of interpretation after they are published?

_____Yes

_____No

Please list any such problems that have been encountered with the regulations of your Department.

(ii) All less formal rules, orders, instructions:

Simultaneous ( )

Not simultaneous ( )

If not simultaneous please estimate the average delay:

_____

18. (a) How many legal officers are there in your Department?

_____

(b) How many of the legal officers in your organization have a fluent command of spoken English and French?

_____

(c) How many of the legal officers in your organization have a fluent command of written English and French?

19. (a) What problems, in your view, would simultaneous drafting in English and in French create?

(b) Do you feel that texts of regulations published in two languages present problems of interpretation after they are published?

_____Yes

_____No

Please list any such problems that have been encountered with the regulations of your Department.